STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	**)**	
On Its Own Motion	**)**	
	)	
	)	**No. 01-0662**
Investigation Concerning Illinois Bell Telephone	**)**	
Company's compliance with Section 271 of the	**)**	
Telecommunications Act of 1996.	**)**	

POST-HEARING REPLY BRIEF (PHASE I) OF AMERITECH ILLINOIS

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INTRODUCTION

Notwithstanding the sound and fury of the rhetoric in opposition to Ameritech Illinois' filing, when it comes to substance there is not all that much in dispute. To begin with, no one disputes that Ameritech Illinois satisfies Track A (section 271(c)(1)(A) of the 1996 Act), by having Commission-approved interconnection agreements with one or more competing providers that serve more than a *de minimis* number of residential and business subscribers. In fact, WorldCom admits (at 4) there is no dispute on that score, and Staff affirmatively states (at 37) that "Ameritech has demonstrated that it meets this requirement." The only dispute, then, is a purely academic one as to the margin of victory: that is, how much *more* than a *de minimis* number the CLECs serve. The FCC has consistently rejected CLEC arguments on such issues as irrelevant. See Section I infra.

There is also little dispute as to most of the competitive checklist. For starters, no party disputes Ameritech Illinois' compliance with four checklist items, and Staff agrees that Ameritech Illinois has satisfied its burden of proof on those four items:

- Checklist item 3: Access to Poles, Ducts, Conduits, and Rights-of-Way (Section II.C infra)
- Checklist item 9: Nondiscriminatory Access to Telephone Numbers (Section II.I)
- Checklist item 11: Number Portability (Section II.K)
- Checklist item 12: Local Dialing Parity (Section II.L)

For four more items, one or more intervenors disputes compliance in part, but Ameritech Illinois has demonstrated that the objections are unfounded, and Staff agrees that Ameritech Illinois has prevailed:

- Checklist item 7: Nondiscriminatory Access to 911, E911, Directory Assistance, and Operator Call Completion Services (Section II.G infra)
- Checklist item 8: White Pages Directory Listings (Section II.H)

- Checklist item 10: Nondiscriminatory Access to Databases and Associated Signaling Necessary for Call Completion (Section II.J)

- Checklist item 14: Resale (Section II.N)

For two more checklist items, 5 (unbundled local transport) and 6 (unbundled local switching), the disputed issues have been mooted by the Commission's recent orders in Docket Nos. 00-0700 and 01-0614. <u>See</u> Sections II.E-F <u>infra</u>.

And for checklist item 13 (reciprocal compensation), there is no real dispute that Ameritech Illinois' existing, legally binding compensation arrangements are at least sufficient to satisfy the checklist. The dispute here is another purely academic one: namely, a challenge to Ameritech Illinois' generic *offer* for potential *future* agreements, and in particular the way that Ameritech Illinois offers to implement the FCC's April 2001 order on traffic bound for Internet Service Providers ("ISPs"). We refute the intervenors' objections on that score in Section II.M below, but the more important point is that they do not even bear on checklist compliance. This Commission has held that disputes about compensation for ISP-bound traffic fall outside its jurisdiction, and within the exclusive purview of the FCC; the FCC, in turn, has held that compensation for ISP-bound traffic is irrelevant to item 13; and in any event if a real, ripe controversy about the matter ever does arise (*i.e.*, a carrier wants to enter a new interconnection agreement and is dissatisfied with Ameritech Illinois' offer), it can be resolved by negotiation and arbitration the way the 1996 Act intends.

That leaves three checklist items of the fourteen: Items 1 (interconnection), 2 (unbundled access) and 4 (unbundled loops). Even there, large portions of Ameritech Illinois' Phase I case are undisputed. For example, much of the argument about pricing concerns a handful of rates (most of which were not even formulated by Ameritech Illinois but by Staff or CLECs), not the vast majority of rates, which were aggressively reviewed and approved by the Commission and are among the lowest (and in some cases are the lowest) in America. Likewise, much of the contest on item 4 relates to procedures for "line splitting" related to advanced services, and there is little dispute as to the use of loops to provide basic telecommunications services. And as we demonstrate in Sections II.A, II.B and II.D infra, even the disputed points consist mainly of (i) intervenor arguments that the FCC and/or this Commission have already considered and rejected; (ii) performance issues that have been deferred to Phase II (for example, AT&T and Staff acknowledge that the disputes with respect to operations support systems ("OSS") are *all* Phase II issues); and (iii) Staff positions that, by Staff's own admission, are not founded on the federal checklist but on state law or Staff policy preferences.

Thus, contrary to Z-Tel's vent that this proceeding has "waste[d] scarce resources" because "it is so patently obvious that Ameritech is not even remotely near complying with the checklist" (Z-Tel Br. at 25), it is instead clear that this proceeding has demonstrated Ameritech Illinois' Phase I compliance and significantly streamlined the issues. The pivotal question, then, is whether the Commission and the parties are to continue moving forward on the issues that are relevant to section 271 – or whether they should instead address unrelated issues. The latter course is the one suggested by Staff and by some intervenors, who ask the Commission to grant a series of requests for affirmative relief under the "public interest" test. There is no need and no legal basis under the 1996 Act to take such a detour. See Section III infra.

Ameritech Illinois has already set forth its affirmative case, and it has anticipated and responded to the bulk of the opposing arguments in its opening brief. Ameritech Illinois replies further below as appropriate. First, however, we provide an overview to illustrate the broader problems that underlie the opposing arguments in general.

<u>Staff's Attempt to Expand the Federal Checklist</u>

The intervenors' briefs take two different philosophical approaches to section 271. Both approaches share one thing in common: Neither one has anything to do with section 271.

The first model, best exemplified by Staff, is to expand section 271's federal checklist by importing requirements from state law. Under that approach, this "investigation concerning Illinois Bell Telephone Company's compliance with section 271 of the Telecommunications Act of 1996" would become an investigation concerning Illinois Bell Telephone Company's compliance with section 271, plus section 13-801 of the Illinois Public Utilities Act, plus every Illinois telecommunications statute, Commission order, or Staff preference.

As Ameritech Illinois demonstrated in its opening brief (at 4-6, 185-198), there is no legal basis for such an expansion. One need read no further than the first sentence of Staff's introduction to see why: It is "Section 271 of the Telecommunications Act of 1996" – not any other law – that "sets forth the procedure and requirements for the Bell Operating Companies ('BOCs') to enter the interLATA market." Staff Br. at 1. Further confirmation that Ameritech Illinois is right comes from Staff and the intervenors themselves, who each try their own circuitous and ultimately fruitless search for a legal foundation on which to build their methodology:

1. Staff's argument opens with a non-starter. Staff points out that some state laws are identical to federal laws, so an investigation into checklist compliance would automatically address any "mirrored" provisions of state law. Staff Br. at 16. True, but those areas of state law are not where the parties disagree. The issue here is not whether this proceeding should address state laws that mirror federal law, but whether it should address state requirements that *differ* from federal law. There is no need to separately address identical state laws, precisely because

they *are* identical to federal law. By definition they do not affect the analysis of federal law, and by definition the analysis of federal law satisfies any need to assess compliance with state law.

2. The first place to turn in assessing the scope of an investigation under section 271 is to section 271 itself. Section 271(c) sets forth the "[r]equirements for providing certain in-region interLATA services." In a "Track A" application like this one, a BOC "meets the requirements of [section 271(c)(1)] if it has entered into one or more binding agreements that have been approved under section 252" with "one or more unaffiliated competing providers of telephone exchange service . . . to residential and business subscribers." 47 U.S.C. § 271(c)(1)(A). "A Bell operating company meets the requirements of" section 271(c)(2) if it "is providing access and interconnection pursuant to one or more agreements described in paragraph (1)(A)" and "such access and interconnection meets the requirements" of the fourteen-point checklist set forth in section 271(c)(2)(B). 47 U.S.C. § 271(c)(2)(A).

Neither these provisions – nor any other provision of section 271 – makes any reference to "state law." Quite the contrary: Congress expressly commanded that the FCC, to which it gave decision-making authority, "may not, by rule or otherwise, limit *or extend* the terms used in the competitive checklist." 47 U.S.C. § 271(d)(4) (emphasis added). The role of state commissions, meanwhile, is even more limited. They are authorized only to consult with the FCC, not to rule, and the subject of that consultation is limited to "the compliance of the Bell operating company with the requirements of subsection (c) of this section," not to compliance with any other body of law. Id. § 271(d)(2)(B). Thus, Staff's own "statutory framework for section 271 approval" (Staff Br. at 2) contains no mention of state law whatsoever.

3. The FCC has issued over a dozen orders on section 271 applications over the past five years, and it has granted approval to BOCs in 14 states. Its most recent orders contain

"statutory appendices" that set a clear road map for section 271 proceedings. There is not a single order in which the FCC denied or limited relief based on state law – in fact, the intervenors do not cite a single order in which the FCC actually considered any question of state law. There is not a single "statutory appendix" that references state law.

The most any intervenor can offer here is a citation to a single line of dictum in the 1997 Michigan 271 Order (¶ 397), in which the FCC suggested that it would "be interested in evidence that a BOC applicant has . . . failed to comply with state and federal telecommunications regulations" as part of its public interest test. See Cook County Br. at 7. The dictum penned by the FCC in 1997 is just that – dictum from 1997. The FCC has never carried out that statement in any of the orders issued since then. Its subsequent orders do not include state law compliance issues under the public interest test, and they do not quote the dictum in the Michigan 271 Order. To the contrary, the FCC has paid heed to the Congressional mandate that the checklist not be expanded, and it has accordingly limited the scope of its public interest analysis. Am. Ill. Br. at 185-186. Further, the FCC has repeatedly held that section 271 proceedings are intended solely to enforce *existing* federal laws, and are not a proper forum to raise the bar by adding new requirements. E.g., Texas 271 Order, ¶¶ 23-24; Kansas & Oklahoma 271 Order, ¶¶ 18-19.

Finally, although the intervenors make passing references to the "public interest and necessity" it is quite clear they do not really view that test as the basis for the far-ranging inquiry they propose here. For the most part, Staff's discussion of state law does not appear under the "public interest" section of its brief, and it does not attempt to actually apply the FCC's public interest standards. Rather, Staff has commingled state law with its discussion of the various federal checklist items – contrary to the ALJ's express instruction that requirements that are not part of the checklist should not be briefed as part of the checklist, but as part of the public interest test. The AG goes even further, and affirmatively asserts (at 14) that "state requirements are incorporated into the checklist items." The intervenors have thus demonstrated that their goal is not to apply the public interest test, but to "extend the terms of the competitive checklist," exactly the result prohibited by section 271(d)(4).

4. The Attorney General, meanwhile, taps a few state commission advisory reports on section 271 for the proposition that state commissions have examined "public interest" issues in the course of advising the FCC on checklist compliance. AG Br. at 28-31. As far as it goes, the AG's brief is correct, but the AG does not elaborate on the type of analysis the state commissions actually performed. A review of the decisions themselves shows that not one of those state commissions conducted or supported the type of free-range investigation into state law that the AG supports here. The only state commission that took substantive action under the public interest standard was the Texas Public Utilities Commission. The 1998 interim report cited by the AG, however, did not undertake an investigation of state law. It did direct Southwestern Bell ("SWBT") to participate in collaborative sessions to address certain CLEC concerns (such as performance measurement and remedies). But the AG overlooks what has happened since the 1998 interim report. This Commission and Ameritech Illinois have long since mirrored the Texas collaborative process. In fact, the collaboratives here were established as a condition of the Commission's approval of the SBC/Ameritech merger in 1999; the substantive commitments that came from those collaboratives (and the collaborative process itself) were built on the Texas model, and many of those commitments are reflected in Ameritech Illinois' testimony. No one here contends that the steps taken by the Texas commission in 1998 have not already been taken in Illinois.

The AG also overlooks what happened in *Texas* after the 1998 interim report. At the time of that report, the FCC had not issued its landmark New York 271 Order, the first to grant a section 271 application and thus the first to enter a holding (as opposed to dictum) on the public interest. The Texas commission's final evaluation, entered after the New York 271 Order, reflects the FCC's more limited approach to the public interest test: Excluding performance measurement and remedy issues, the Texas commission's public interest analysis takes only five pages (98-103) of an 111-page report, and it contains only a review of competitive entry data (in which the commission considered the factual disputes between CLECs and SWBT as to CLEC market share, and concluded that they did not affect its recommendation that granting SWBT's application would be in the public interest). Jan. 31, 2000 Evaluation of Public Util. Comm'n of Texas, CC Docket No. 00-4 (available at www.fcc.gov, "Search For Filed Comments" page).

The other public interest analyses cited by the AG follow the same limited model and thus prove Ameritech Illinois' point. Like the final Texas evaluation, they occupy only a small portion of the state commissions' reports, and they focus mainly on questions of performance measurement and remedies. The Massachusetts Department's analysis of the "public interest" comprised only 4 pages (407-411) of its 411-page evaluation and it made only one reference to state law – not to address compliance with state law but to conclude that no further "public interest" action was necessary given that the state's "rocket docket" procedure provided sufficient protection against anti-competitive behavior. The Rhode Island Commission's public interest analysis comprised only four pages (188-191) of its report, and it rejected WorldCom's contention that the level of competitive entry in that state was insufficient. The New Jersey Board's "thoroughly considered" public interest test (AG Br. at 28) occupies three pages (84-87) of an 87-page report, and concludes that *no* additional requirements beyond compliance with the federal checklist are necessary to support a positive recommendation.

5. The absence of any foothold in section 271 leads Staff and the AG to comb the rest of the 1996 Act. Their contention is that the Act does not preclude states from establishing additional requirements that are consistent with the Act. Staff Br. at 10-11; AG Br. at 15. But that position is founded on three separate leaps of faith. First, Staff and the AG simply assume that their arguments here *are* requirements of state law. In many cases, however, Staff articulates requirements that are not founded on any express provision of state law but on Staff's desired policy. The second assumption – that the state law requirements they seek to enforce or create are "consistent" with the 1996 Act – simply wishes away another vigorously disputed issue. In many cases, Ameritech Illinois contends that those requirements are inconsistent with and thus pre-empted by the 1996 Act. For example, it is hard to imagine a federal-state conflict more clear than the Commission's statement in Docket No. 01-0614 that state law has tossed the federal rules on unbundling onto the "scrap heap of time." June 11, 2002 Order, Docket No. 01-0614, at 30. These issues are now pending, either before the Commission (in separate dockets) or before the courts, and it would be improper to either ignore or attempt to resolve them here.

Staff's and the AG's third and longest leap comes in their conclusion. Even if one accepts on faith the dual premises that their proposals *are* state law, and that they are consistent with federal law, that does not justify their suggested conclusion. It is one thing to say that requirements are not prohibited by federal law. It is quite another to say, as Staff and the AG do, that such requirements are now part and parcel of section 271 and must be assessed as part of this proceeding. There is no basis for that conclusion, and Staff itself demonstrates as much when its stated rationale does not start with "the 1996 Act says" or "the FCC has held" (because either statement would be unsupportable), but rather "it stands to reason." Staff Br. at 12.

6. The next stop for Staff and the intervenors is the state capitol building. Their position is that the Illinois legislature's amendments to the PUA in 2001 contained a command that the Commission consider compliance with the PUA as part of any section 271 analysis. There is no statutory basis for that position. The only citations the intervenors provide are to statements by individual legislators. Such statements do not establish legislative intent. <u>See</u> <u>People v. R.L.</u>, 634 N.E.2d 733, 738 (Ill. 1994). Moreover, there is no basis for looking at legislative history in the first place, as there is no assertion that the PUA is ambiguous in this regard. Whatever substantive goals the legislature had in amending the PUA, *none* of the intervenors' "support" says that the legislature actually told the Commission to use section 271 to enforce the PUA amendments – even if the state legislature *could* amend the rules for a federal statute like section 271. The numerous state-law enforcement mechanisms contained in the PUA instead dictate the opposite conclusion, and demonstrate that the legislature did *not* intend to use federal law as a carrot or a stick in enforcing state law.

7. Where legal basis is lacking, Staff and the intervenors typically try to fill the gap with accusation, and this issue is no exception. In this regard, they assert that Ameritech Illinois has engaged in a "pattern of non-compliance" with the law. In Section III.A <u>infra</u>, Ameritech Illinois rebuts the intervenors' accusations in detail. Two global comments are in order here. First, the "pattern" to which the intervenors refer is not the traditional pattern of non-compliance (*i.e.*, a party is ordered to do something, but does not). Rather, the alleged non-compliance is as follows: (a) Ameritech Illinois proposes one approach to implementing a general provision of the 1996 Act, state law, or a Commission order; (b) Staff or a CLEC proposes a different

approach; and (c) the Commission adopts the Staff or CLEC proposal. According to Staff, the Commission's order in step (c) means that Ameritech Illinois was in "non-compliance" *before* the Commission even ruled. That theory of *ex post facto* "non-compliance" does not square with due process – particularly when one considers the complex and dynamic nature of telecommunications law and the fact that many Commission orders, by their own terms, impose additional requirements above and beyond those of existing federal law.

Second, putting aside the intervenors' factual and legal errors, their allegations of non-compliance do not support the investigation they seek. To the extent the intervenors contend that Ameritech Illinois is a repeat offender of federal law, those allegations are already addressed by assessing Ameritech Illinois' compliance with the 14-point competitive checklist of section 271, and the numerous FCC rules and orders interpreting that checklist. If the Commission finds at the end of the day that Ameritech Illinois has complied with all those rules, it is hard to see how it could also agree with the intervenors' theory that Ameritech Illinois violates federal law. To the extent the intervenors contend that Ameritech Illinois violates *state* law (a proposition with which Ameritech Illinois also disagrees), their own account shows that the Commission has ample means to investigate and enforce compliance with state law without resort to section 271.

8. In the end, the absence of any real support for its approach leads Staff to throw up its hands and say that the Commission might as well conduct a state law investigation, even if the FCC ignores its analysis, because "[t]he Commission has nothing to lose." Staff Br. at 22. But the loss of time and resources (of the Commission and the parties) to generate paper that the FCC will simply discard is self-evident. So, too, is the harm in the end result Staff seeks. After all, the basic gist of this intervenor approach is that section 271 approval should be delayed or even denied – not because the Commission and Ameritech Illinois have failed to do what section 271

requires, but because the Commission and Ameritech Illinois have done *more*. That perverse outcome is not fair to the consumers of the state (who are denied the benefits that flow from competition across all markets) or to Ameritech Illinois (which is prevented from matching its competitors' combined local/long-distance calling plans by delays in long-distance approval).

The CLECs' Attempt to Ignore the Federal Checklist

The second intervenor approach is taken primarily by the CLEC camp. While there is no shortage of volume (both in terms of length and the customary anti-Ameritech invective tone) in the CLECs' briefs, it does not take long for the reader to see what is missing. Even though this is an investigation into compliance with section 271, and even though this Commission is acting as an advisor to the FCC, there are few meaningful references to the FCC's orders under section 271. McLeodUSA and XO do not cite *any* of those orders. Similarly, the other CLEC briefs cite FCC orders almost exclusively for broad, undisputed propositions (along the lines of "the Act requires nondiscrimination" or "checklist item 8 requires access to White Pages") that do not help resolve the points that are in dispute.

The paucity of meaningful FCC references does not stem from any absence of FCC precedents. Section 271 has been in place for six years; the FCC has granted section 271 applications for 14 states; and its orders lay out with care the arguments raised and the decisions made on each issue. Nor could one say that the issues raised in this proceeding are all of first impression, or that the FCC has yet to address any of them. The real reason for the CLEC omission is that the FCC *has* addressed many of the precise issues raised here – in some cases, more than once – and it has expressly rejected the CLECs' position:

1. AT&T contends (at 45) that if Ameritech Illinois proposes and "intends to charge" new UNE rates, "this Commission must consider their compliance with the TELRIC methodology *prior to granting Ameritech interLATA authority*." What AT&T does not say is

that the FCC has repeatedly held that checklist compliance is to be based on current rates, and repeatedly refused to consider the compliance of rate proposals, pending or possible.[1] Georgia & Louisiana 271 Order, ¶ 96 ("[W]e do not believe that the existence of a new Georgia cost docket, without more, should affect our review of the currently effective rates submitted with BellSouth's section 271 application."). See also Section II.B.3 infra.

2. RCN complains that Ameritech Illinois' bills for special access services are inaccurate, and even anticipates (at 11) Ameritech Illinois' position "that these matters are not properly raised in this proceeding as they concern special access issues, which Ameritech states is not part of the Section 271 analysis." What RCN does not say is that the *FCC* has agreed with Ameritech Illinois' position and has *held* that special access matters are not part of a section 271 analysis. Texas 271 Order, ¶ 335 ("[W]e do not consider the provision of special access services pursuant to a tariff for purposes of determining checklist compliance.").

3. AT&T complains about the "surprise" one-month delay in the implementation of version 5 of the Local Service Ordering Guide ("LSOG 5") from March 2002 to April 2002, says that it "recommended that the FCC request further information from SBC concerning this delay," and suggests that "[t]he Illinois Commission should ask similar questions of SBC/Ameritech." AT&T Br. at 83-84. What AT&T does not say in its brief – even though its own witness acknowledged it on cross – is that the FCC has already answered AT&T's questions, and granted the one-month extension. Tr. 1688-89 (Willard).

4. WorldCom says (at 36) that "the FCC has determined that the [Directory Assistance Listings] database is a UNE" without providing a citation. What WorldCom does not

[1] AT&T's rhetorical zeal apparently also led it to forget that it is the FCC, not this Commission, which is responsible for "granting Ameritech interLATA authority."

say is that the FCC has held that Directory Assistance Listings are *not* subject to unbundling. UNE Remand Order, ¶ 444.

5. AT&T contends (at 165) that the 1996 Act is "uncomfortably close" to death, and claims that the Commission should "structurally separate" Ameritech Illinois as punishment for CLEC financial difficulties. What AT&T does not say is (i) its own Chairman has said that "the Telecom Act . . . is now finally beginning to work" and "[n]ow is not the time to change the rules" (Am. Ill. Cross Ex. 29); (ii) the FCC has "consistently declined to use factors beyond the control of the BOC, such as the weak economy, or over-investment and poor business planning by competitive LECs to deny an application" (Georgia & Louisiana 271 Order, ¶ 282); and (iii) the FCC has held "the [1996] Act does not require structural separation as a condition to Section 271 approval, and we do not require it here." New Jersey 271 Order, ¶ 183.

We could, to use AT&T's phrase, "go on and on" (AT&T Br. at 152) – and we do, below. It is apparent, then, that the CLEC approach is not to enforce the federal checklist or advise the FCC but to ignore them. The problem with that approach, however, is that what the CLECs do *not* say, the FCC *has* said; and it is the FCC, not the CLECs, that controls.

The Burden of Proof

Staff correctly notes (at 24) that Ameritech Illinois, as the party seeking relief, bears "the burden of going forward with the evidence, and the burden of persuading the trier of fact." As the FCC has explained, a BOC seeking section 271 relief bears the initial burden to present its *prima facie* case. Texas 271 Order, ¶ 49. That said, Ameritech Illinois does not bear the additional burden to rebut every allegation of non-compliance made by the other parties to this proceeding, as RCN suggests (at 2). After Ameritech Illinois presents its *prima facie* case, "opponents must produce evidence and arguments to show that the application does not satisfy the requirements of section 271." Texas 271 Order, ¶ 49. As the FCC has explained: "When considering commenters' filings in opposition to the BOC's application, we look for evidence that the BOC's policies, procedures, or capabilities preclude it from satisfying the requirements of the checklist item. Mere unsupported evidence in opposition will not suffice." Id. ¶ 50.

Many of the intervenors' allegations in this proceeding consist of "mere unsupported evidence in opposition." For instance, RCN (at 19) asserts that Ameritech Illinois has not shown that its rates for line connection and service order processing are TELRIC-compliant – but the only "support" that RCN provides is the fact that different rates apply in Ohio and Michigan. This Commission investigated and approved the applicable rates for Illinois (which were proposed by WorldCom, not Ameritech Illinois) in its October 16, 2001 Order in Docket No. 98-0396 (see page 42 of order). Surely RCN's unsupported allegation does not shift the burden to Ameritech Illinois to disprove that allegation by turning this docket into another cost docket. Other intervenor allegations consist of, at most, anecdotal accounts of isolated incidents. Consider WorldCom's assertion that Ameritech Illinois does not properly update its CNAM database, which is based entirely on a single example. See WorldCom Br. at 38-39. This type of allegation is not sufficient to overcome Ameritech Illinois' *prima facie* case, and certainly Ameritech Illinois does not bear the burden of investigating every single other transaction for all time to prove that WorldCom's isolated example is not the rule.

Further, in several instances Staff and the CLECs seek affirmative relief or seek to establish new obligations that are not required under the FCC's current rules. Over and above the FCC's clear mandate that section 271 proceedings are an inappropriate forum for such relief (see Section III infra), Staff and the CLECs are also the "party seeking relief," and thus bear the burden of proof with respect to those issues.

We do not understand Staff to disagree on those basic principles. Staff does, however, raise two side issues. First, Staff asserts (at 26) that Ameritech Illinois "has not provided a clear and consistent explanation of what evidence it is relying on to meet its burden of proof obligations in this proceeding," and purports to be confused over Ameritech Illinois' evidence concerning existing agreements, Commission-ordered tariffs, and Ameritech Illinois' Generic Interconnection Agreement ("GIA").[2] Staff is creating confusion where none exists. Ameritech Illinois witness Alexander's verified draft affidavit contained almost 100 provision-by-provision references to various interconnection agreements and tariffs that show its "binding legal obligations" to provide each of the fourteen checklist items. Am. Ill. Ex. 1.0 (Alexander Direct) Sch. SJA-1, ¶¶ 13-17, 19-22, 25, 28-50, 57, 62-63, 79, 83-83, 86, 88-90, 92-94, 99-102, 109-111, 116, 119, 121-122, 124-126, 129-135, 140-143, 16, 148; Am. Ill. Ex. 1.1 (Alexander Rebuttal) at 5-6. In addition, a chart was attached to summarize the information provided in the affidavit. To be sure, the affidavit also contained a few standalone references to the GIA, but any concern that those references were not legally binding was quickly rendered moot when the Commission approved a binding interconnection agreement between Ameritech Illinois and One Point Communications that incorporated those exact GIA provisions.[3] Am. Ill. Ex. 1.1 (Alexander Rebuttal) at 5-6. To avoid any possible confusion, Mr. Alexander attached another chart to his rebuttal testimony (id. Sch. SJA-1) summarizing each of the references to the GIA and the

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[2] The GIA is a non-binding offer that is presented at the start of negotiations.

[3] Although Staff still claims (at 28) that "Ameritech appears to request that the Commission consider the GIA as affirmative evidence of compliance," as explained above, Ameritech Illinois is not making such a request. Thus, Staff's observation that the GIA is continually updated (a natural phenomenon in a dynamic area of law) is beside the point. See Staff Br. at 29-30.

corresponding section of the One Point agreement that contained the same language.[4] In reality, Staff did not have any real problem identifying or locating Ameritech Illinois' proof, for Staff has found that Ameritech Illinois has *met* its burden of proof with respect to the majority of the checklist items. No other party professes confusion either, and the Commission should pay no heed to Staff's attempt to create unnecessary confusion.

Second, Staff takes the extreme position that the Commission should simply ignore all tariffs as proof of Ameritech Illinois' legally binding obligations to provide checklist items. Staff Br. at 35. Staff does not dispute that those tariffs are legally binding; rather, the sole basis for Staff's opposition is that Ameritech Illinois *asked* the Commission for rehearing with respect to the tariff requirements imposed in Docket No. 01-0614, and that one ground for that application was that the 1996 Act requires interconnection agreements instead of tariffs. Id. The Commission, however, denied that application. While Staff accuses Ameritech Illinois of taking inconsistent positions, the same could be said of Staff. After all, Staff's position in this docket is that *all* wholesale products and services must be tariffed because "the law is the law." See Section III.B infra. The substantive point that matters is this: The 1996 Act requires Ameritech Illinois to meet its burden of proof by demonstrating the existence of present, legally binding obligations to provide checklist items, and there is no dispute that Commission-ordered tariffs are legally binding.

4 The updated chart was not "new evidence," as Staff claims (at 31), but merely summarized that all of the provisions of the GIA cited in Alexander's verified draft affidavit had in fact been incorporated into a legally binding interconnection agreement. And, in any event, Staff witnesses were not "prevented . . . from evaluating and responding to Ameritech's evidence," (see Staff Br. at 31); after all, Staff reviewed the One Point agreement in Docket No. 01-0660 and it had another round of testimony here after Ameritech Illinois presented its rebuttal.

A final side issue is raised by AT&T. Separate from any attempt to refute the substantive testimony of Ameritech Illinois' witnesses, AT&T resorts to a series of personal attacks. AT&T Br. at 1-3. Ameritech Illinois' witnesses were subjected to four and half days of cross-examination that generated over 1,600 pages of transcript. They also sponsored hundreds of pages of direct, rebuttal and surrebuttal testimony. From this vast body of evidence, AT&T criticizes Ameritech Illinois' witnesses on four points:

(1) Ms. Smith testified that the nonrecurring line connection charge for a stand-alone loop is $20.21 – and it is. Tr. 275-277 (Smith). It is unclear from the cross-examination whether Ms. Smith believed that the Order on Reopening in Docket 98-0396 held that all UNE-P non-recurring charges are interim, but as Ameritech Illinois counsel pointed out during cross-examination, the interpretation of a Commission order is a legal issue, not a factual matter. Tr. 273.

(2) AT&T criticizes Ms. Johnson for disagreeing with Staff on the question whether Ameritech Illinois got Staff's "OK" of the tariff resulting from Docket No. 00-0393 prior to filing. While there is disagreement between Ms. Johnson and Staff on this issue, that does not mean that Ms. Johnson could not testify; it merely means that there is a factual disagreement – one which should not even be addressed in this docket. See Section II.D.2(c) infra.

(3) As for Mr. Alexander, AT&T's sole criticism of his lengthy cross-examination is that he was "unable to state, with specificity, which of the provisions from its interconnection agreements [Ameritech Illinois] relies upon to demonstrate compliance" with the numerous obligations set forth in the 1996 Act and the FCC's rules. AT&T must have missed the extensive discussion of this point in Mr. Alexander's direct, rebuttal, and surrebuttal testimony, where he clearly explained the various interconnection agreements upon which Ameritech Illinois relies, and where he took the extra step of preparing charts to illustrate the point. Am. Ill. Ex. 1.2 (Alexander Surrebuttal) at 2-5 and Schs. SJA–3A through 3H.

(4) Finally, Mr. Thompson is criticized for asserting that, as a general matter, a change in Ameritech Illinois personnel does not lead to a change in substantive positions the Company takes during interconnection agreement negotiations. Tr. 663 (Thompson). The fact that Mr. Thompson was not personally involved in the McLeodUSA negotiation does not preclude him from testifying on Company policy.

In deciding whether Ameritech Illinois has met its burden of proof, the Commission should focus on the actual proof, which demonstrates checklist compliance.[5]

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5 In a proceeding such as this one, Ameritech Illinois has the unenviable task of presenting the Company's position and track record on a vast number of products and processes. It is not realistic to expect these witnesses to have been personally involved in each and every incident or process about which a CLEC complains. Ameritech Illinois' roster of witnesses would have doubled or tripled if there were such a requirement.

DISCUSSION

I. AMERITECH ILLINOIS IS ELIGIBLE TO SEEK INTERLATA RELIEF UNDER SECTION 271(C)(1)(A)

No one disputes that Ameritech Illinois has interconnection agreements with "one or more competing providers of telephone exchange service" that serve "more than a *de minimis* number" of residential and business subscribers (New Jersey 271 Order, ¶ 10) and thus satisfies Track A. Nor is there any room for dispute. As of April 2002 CLECs gained over 1.9 million or 23 percent of the total lines in the Ameritech Illinois service area. Am. Ill. Br. at 8. That amount is, if anything, conservative, because it does not even include AT&T's June 2002 large-scale high-profile entry into the residential market. Id. at 10. Even so, the April 2002 figure still exceeds *every single one* of the fourteen applications that the FCC has approved thus far. Id. at 9. Thus, WorldCom itself acknowledges (at 4) that "there appears to be little if any debate as to whether facilities-based local providers exist" and Staff concludes (at 37) that "Ameritech has demonstrated that it meets this [Track A] requirement."

Estimates of CLEC Lines. Recognizing that the data on competitive entry put a conclusive kibosh to the lament that local competition is "reeling" (AT&T Br. at 24), Staff and the CLECs try to manufacture a debate about the market share of the CLECs. Their first approach is to challenge the data on competitive entry presented by Ameritech Illinois as "highly suspect" (WorldCom Br. at 4) or "inflate[d]" (AT&T Br. at 16), an attack Staff joins at a lukewarm temperature (at 39) by arguing that Ameritech Illinois' methodology "probably" overstates CLEC lines.

Now it is no secret that Ameritech Illinois' analysis is based, in part, on estimation. Ameritech Illinois has actual data for about 897,000 or nearly half the CLEC lines (consisting of 335,000 served by UNE Platforms, 326,000 served by unbundled loops, and 236,000 served by resale), and it estimates the other half (lines that CLECs serve entirely by means of their own facilities). Ameritech Illinois explained and supported its estimation methodologies in its opening brief (at 12-14) and in the Rebuttal and Surrebuttal Testimony of Ms. Heritage (Am. Ill. Exs. 14.0 and 14.1). In short, Ameritech Illinois estimates CLEC lines by using (i) the number of CLEC-provided listings in the E911 database and (ii) the number of CLEC interconnection trunks with Ameritech Illinois (Ameritech Illinois uses a conservative assumption that CLECs have 2.75 lines per trunk). Am. Ill. Br. at 13.

Ameritech Illinois agrees that actual data are generally preferable to estimates, but the intervenors' criticisms suffer from three separate and fatal flaws. *First*, even if one were to take the patently under-inclusive approach of *ignoring* the estimated portion of Ameritech Illinois' analysis (and thus assuming that there are *no* CLEC lines served entirely by CLEC facilities, and that CLECs are installing interconnection trunks and placing numbers in the 911 databases purely as a lark), the 897,000 lines for which Ameritech Illinois has actual records – and as to which there is no dispute – are more than enough to satisfy the "more than *de minimis*" requirement of Track A.[6]

[6] Even AT&T does not go so far as to ignore CLEC-only lines; rather, it asks the Commission to assume that each interconnection trunk only corresponds to one CLEC-owned access line (in other words, to assume that CLECs are inefficient). AT&T Br. at 18. The FCC has never endorsed such a "1 to 1" assumption, and while the Department of Justice offered it in the 2000 Texas proceedings it has never used that method since. Am. Ill. Ex. 14.0 (Heritage Rebuttal) at 13-14. Nevertheless, AT&T's "1 to 1" method would add another 135,000 CLEC-only lines to the 897,000 UNE and resale lines described above, and the resulting 1.03 million lines would even more easily surpass Track A's "more than *de minimis*" standard. See id. Sch. DOH-2, ¶ 21 (showing 459,000 interconnection trunks; if each corresponded to a single line, there would be 459,000 lines served by CLEC switches; subtracting 326,000 standalone loops already included in Ameritech Illinois' data yields 135,000 lines served entirely by CLEC facilities).

Second, the intervenors are overlooking the fact that, for those lines estimated by Ameritech Illinois, the actual data reside with the CLECs themselves. Thus, if there were really a material problem in Ameritech Illinois' estimates, any CLEC could have presented the following simple rejoinder: "Ameritech Illinois estimated that we have *x* lines. That is wrong. Our records show we have only *y* lines." No CLEC did so.[7] That the CLECs instead resort to estimates of their own (such as AT&T's Rube Goldberg contraption based on minutes of use, AT&T Br. at 11-14) confirms that Ameritech Illinois' estimates are reasonable or even conservative.[8]

Third, and most fundamentally, the intervenors are, in the end, simply attempting to resurrect the never-accepted and oft-rejected "market share" test, under which a BOC would not

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[7] In an attempt to rationalize this telling omission, AT&T contends "Ameritech has not made all of the competitive information . . . available to the parties, even under confidentiality restrictions, so as to substantiate the claims regarding the level of competition." AT&T Br. at 9. AT&T's vague contentions about discovery are, of course, untimely. They are also unfounded. Ameritech Illinois provided all CLECs with the aggregate figures for competitive entry, and any CLEC that entered into the proprietary agreement (as AT&T did) received line-item detail showing its share of every total. (The ALJ, Staff and the Attorney General received line-item detail for every CLEC.) To the extent that AT&T is suggesting it should have received line-item detail for *other* CLECs, like WorldCom (a proposition that the other CLECs would no doubt vigorously oppose), that suggestion is flatly contrary to the proprietary agreement AT&T signed.

[8] WorldCom asserts that the Commission should disregard the record evidence on Track A entirely, and instead rely on something that is not in the record and that does not even exist: the annual report that the Commission will submit to the General Assembly in 2003. WorldCom Brief at 5-6. The 2003 report was not intended for evaluating Track A and it will not be suitable for that purpose. The report will not contain an analysis of the state of competition within Ameritech Illinois' service area, but within Illinois as a whole. For the same reason, the FCC does not rely on its own Local Telephone Competition Report in evaluating section 271 applications. See Georgia & Louisiana 271 Order, ¶ 14 ("We note, however, that the market share reported in the Local Competition Report reflects market share for the entire state of Georgia rather than just BellSouth's territory, and does not indicate whether any specific competitor serves more than a *de minimis* number of customers. Accordingly, it does not undermine our confidence in the accuracy of BellSouth's estimates.").

receive long-distance relief until CLECs declared themselves satisfied with their market share. Congress, the FCC, and the D.C. Circuit have all held that there is no such test under Track A. Georgia & Louisiana 271 Order, ¶ 14 ("Congress specifically declined to adopt a market share or other similar test for BOC entry into long distance. Accordingly, the applicant is not required to show that competitors have captured any particular market share."); New Jersey 271 Order, ¶ 10 (Track A does not "require any particular level of market penetration"); Sprint Communications Co. v. FCC, 274 F.3d 549, 553-54 (D.C. Cir. 2001) (agreeing with the FCC that the Act "imposes no volume requirements for satisfaction of Track A"). The FCC has further rejected attempts to revivify the market share test as part of the public interest analysis, the tactic AT&T (at 8) and Cook County (at 8-10) attempt here. New York 271 Order, ¶ 427 ("Congress specifically declined to adopt a market share or other similar test for BOC entry into long distance, and we have no intention of establishing one here [under the public interest test]."); Georgia & Louisiana 271 Order, ¶ 282.[9]

Financial Difficulties in the Telecommunications Industry. In its opening brief (at 14-16), Ameritech Illinois demonstrated that AT&T's reports of the CLEC industry's demise are not only "greatly exaggerated" (to borrow Mark Twain's homily) but irrelevant to Track A. Not one of the CLECs that AT&T has declared not viable (including WorldCom, which AT&T has now added to its critical list) agrees with AT&T's assessment of its prospects.

[9] Ameritech Illinois does not understand Staff's assertion (at 39) that Ameritech Illinois' estimates are flawed because they consider only CLEC lines, not Ameritech Illinois lines or the number of lines in total. In the first place, Ameritech Illinois *did* present data as to its own lines, and the percentage of total lines served by CLECs. Am. Ill. Br. at 8-10. In the second place, the analysis under Track A focuses on the number of CLEC lines (and whether it is "more than a *de minimis* number") and the FCC has expressly rejected a market share test.

In an effort to prop up its case, AT&T now adds a few extra-record articles from the popular media. AT&T Br. at 21, 23, 26. To the extent the Commission even considers such materials, Ameritech Illinois vigorously disagrees with AT&T's assertions that the CLEC industry is dying and that Ameritech Illinois is to blame. But the Commission need not take Ameritech Illinois' word for it:

- In a televised interview with PBS, AT&T Chairman Armstrong attributed his company's falling stock price, *not* to any lack of competition in the local market, but to *increased* competition in the long-distance market, along with a stock split and spin-off; Armstrong went on to laud AT&T's "local business" as "a multibillion dollar business growing in double digits and continuing to be I think a very successful investment for us" (Aug. 2, 2002 Transcript, Wall Street Week with Fortune at 1-2, 3: copy attached as Attachment 1 hereto; administrative notice requested);

- ICG's CEO Randall Curran, when asked to reconcile the financial difficulties of some individual CLECs with reports that "CLEC access lines and market share are continuing to go up" in the aggregate, explained that "at the end of the day it's going to be OK. The network was built with all this short-term money, and [investors] all lost their money. But it's all there. The second round of investors are going to end up doing pretty well." (ICG Rises from Industry Ashes, Expects Other CLECs to Follow, Telecommunications Report, April 1, 2002 at 4, 5: Attachment 2 hereto; administrative notice requested);

- FCC Chairman Michael Powell has informed Congress that the current downturn in the industry did not come from barriers to local entry, but the opposite phenomenon: overly ambitious entry, and an over-supply of network capacity "that telecommunications companies flooded into the market" but that was not supported by demand. (Written Statement of Michael K. Powell before the Senate Comm. on Commerce, Science and Transportation, Financial Turmoil in the Telecommunications Marketplace: Maintaining the Operations of Essential Communications, July 30, 2002, at ii: Attachment 3 hereto; administrative notice requested).

But the more important point is that this Commission need not resolve the debate taking place in the media or the contradiction between AT&T's brief and its public statements. For purposes of section 271, the FCC has already found that "the financial hardships of the competitive LEC community" result from "the weak economy" and "over-investment and poor business planning by competitive LECs," and it has decided that such "factors beyond the control of the BOC" do not affect the BOC's application. Georgia & Louisiana 271 Order, ¶ 282; see also Rhode Island 271 Order, ¶ 106 ("Sprint also argues that . . . the continuing bankruptcy of competitive LECs mean that the public interest is not served by granting Verizon section 271 approval in Rhode Island. We reject these arguments.").

II. AMERITECH ILLINOIS HAS A CONCRETE LEGAL OBLIGATION TO PROVIDE ALL PRODUCTS AND SERVICES REQUIRED BY THE COMPETITIVE CHECKLIST

A. Checklist Item 1: Interconnection.

1. Interconnection Trunking

Location of Point of Interconnection. AT&T asserts that "[o]ne glaring problem" with Ameritech Illinois' interconnection agreements is that they require a CLEC to establish a point of interconnection "in the Ameritech Illinois *serving area* of the LATA." AT&T Br. at 60 (emphasis in original). AT&T's assertion is wholly without merit because, as AT&T itself notes (at 51), the relevant provision of the 1996 Act, section 251(c)(2)(B), states that an ILEC is to provide interconnection "at any technically feasible point *within the carrier's network*." (Emphasis added.)[10] Ameritech Illinois' interconnection agreements implement this requirement. A point of interconnection located outside the ILEC's service territory is not "within" the ILEC's network, and there is no basis for requiring Ameritech Illinois to establish a point of interconnection outside of its service territory.

Direct End Office Trunking. AT&T asserts that Ameritech Illinois' policy of requiring CLECs to establish direct trunks to end offices whenever the level of traffic to a particular end office reaches a "DS1" level (see Am. Ill. Br. at 18-19) is justified only if Ameritech Illinois can show that "significant adverse impacts" would otherwise result. AT&T Br. at 65-66. The conclusive rebuttal is that Ameritech Illinois has already made the showing AT&T wants – and the Commission has already found that showing to be sufficient. In the Ameritech

[10] Similarly, the relevant FCC rule, 47 C.F.R. § 51.305(a)(2), requires that the point of interconnection be established at "any technically feasible point *within* the incumbent LEC's network." (Emphasis added.)

Illinois/Verizon Wireless arbitration, the Commission found that "tandem exhaust is a significant problem in Illinois," and found that Ameritech Illinois had justified a threshold level of one DS1 for the establishment of direct end office trunking. May 1, 2001 Order, Docket No. 01-0007, at 6-7.[11] AT&T has provided no justification for the Commission to depart from its previous decision.

Finally, although AT&T (at 65) continues to muddle the concepts of direct trunking and a single point of interconnection, the FCC has confirmed that direct trunking does not entail establishing a new or different point of interconnection because the physical point of interconnection does not change (and may still be chosen by AT&T). Verizon Virginia Arbitration, ¶ 91 ("[I]mplementing direct end office trunks does not entail changing the location of a tandem office point of interconnection."). All direct trunking means is that calls destined for the Ameritech Illinois end office in question are routed or trunked directly through the POI to that end office instead of being switched at the tandem office; the physical point of interconnection does not change. See Am. Ill. Ex. 5.1 (Deere Rebuttal) at 10-11.

Transit Traffic. The same analysis defeats AT&T's allegation that Ameritech Illinois has not supported its requirement of direct trunking with a third party carrier when the level of traffic that Ameritech Illinois "transits" between AT&T and that third party carrier reaches the DS1 level. AT&T Br. at 67-68. On this issue as well, the Commission's order in Docket No. 01-

11 This Commission's factual finding with respect to tandem exhaust in Illinois distinguishes the current situation from that considered by the FCC in the recent Verizon Virginia Arbitration. There, the FCC found that direct trunking was unnecessary only because, on the record before it in that arbitration, Verizon had failed to prove that CLEC traffic was causing tandem exhaust in Virginia. Verizon Virginia Arbitration, ¶ 89.

0007 already contains the showing that AT&T concedes would justify the DS1 threshold. Am. Ill. Br. at 19 n.2.

Moreover, AT&T is wrong in its underlying premise that Ameritech Illinois "has an obligation to provide transit service to AT&T for the exchange of local traffic with other carriers, regardless of the level of traffic exchanged between AT&T and the other carriers." AT&T Br. at 67. No such obligation exists. In the recent Verizon Virginia Arbitration (¶ 117), the FCC held that "the Commission has not had occasion to determine whether incumbent LECs have a duty to provide transit service under [section 251(c)(2)], nor do we find clear Commission precedent or rules declaring such a duty." Likewise, in the 1996 arbitration with AT&T, this Commission specifically found that transiting is not required by federal law. Nov. 26, 1996 Order, Docket Nos. 96 AB-003/004, at 10-11. Given that there is no obligation to even *provide* transit service, the FCC curtly rejected AT&T's transiting arguments (the same arguments AT&T makes here), and approved Verizon's proposed requirement of direct trunking for transit traffic at the DS1 level – which is identical to the threshold challenged here. Id. ¶ 115.

Staff's Issues With Respect to Single Point of Interconnection (SPOI). As a result of the August 23, 2002 Stipulation to Eliminate Issues (¶ 2(c)), Staff's issues concerning Ameritech Illinois' SPOI offering have been resolved.

Staff's Transiting Claims. Staff asks (at 54), "Is Ameritech's policy to not accept third party local traffic delivered to it by an interconnected carrier a violation of its duty to provide interconnection in accordance with the [1996 Act]?" But Staff has asked the wrong question. The real question is: Given the uncontested evidence that Ameritech Illinois *does* accept such traffic and could not prevent carriers from delivering such traffic even if its "policy" was otherwise, why should the Commission address the theoretical question of whether or not section 251(c)(2) requires Ameritech Illinois to accept such traffic? It should not. Rather, the Commission should adhere to its decision in the Verizon Wireless arbitration and decline to find that Ameritech Illinois is legally obligated to accept such traffic. Am. Ill. Br. at 22-23.

At any rate, Staff is wrong in its assertion that it is Ameritech Illinois' "policy to not accept third party local traffic delivered to it by an interconnected carrier." Staff Br. at 54. Ameritech Illinois has no such policy, does accept such traffic, and could not prevent a carrier from delivering it anyway. Am. Ill. Ex. 5.1 (Deere Rebuttal) at 13; Tr. 196 (Deere). Staff itself says the only evidence supporting its position is Ameritech Illinois' opposition to transiting language proposed by Verizon Wireless in their arbitration.[12] But Staff is leaving out the punch line. The Commission ruled *in favor of* Ameritech Illinois in that arbitration, finding Verizon Wireless' language unnecessary given that it had no concrete plans to perform transiting. May 1, 2001 Order, Docket No. 01-0007, at 35. Here too, no CLEC has claimed that it is now or soon will be transiting traffic, or that Ameritech Illinois' "policy" has prevented or in any way impaired its ability to "compete in the local exchange market," as Staff contends (at 56).

2. Collocation

Access to the Main Distributing Frame ("MDF"). AT&T, McLeodUSA/TDS and RCN continue to argue that their technicians should be allowed to access the MDF directly. AT&T Br. at 51-57; McLeodUSA/TDS Br. at 4-6; RCN Br. at 4-11. They provide no legal basis for their position other than generic references to Ameritech Illinois' obligation to provide

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[12] We do not understand Staff's position that the only credible evidence on this issue is Ameritech Illinois' position in the Verizon Wireless arbitration. See Staff Br. at 57. No party even attempted to dispute Ameritech Illinois' testimony that it "can and does," on a policy level, accept such traffic, or its testimony that on an operational level Ameritech Illinois has no way of distinguishing transited traffic from the CLEC's own local traffic. Am. Ill. Ex. 5.1 (Deere Rebuttal) at 13; Tr. 196 (Deere).

collocation on a nondiscriminatory basis. AT&T Br. at 52; RCN Br. at 3-4. In fact, as explained in Ameritech Illinois' opening brief, this Commission has already concluded that direct access to the MDF is not required. Am. Ill. Br. at 27.

AT&T complains specifically about problems it encountered with the NorthPoint assets it acquired. AT&T Br. at 53. These problems appear to be unique to the NorthPoint arrangements and, as explained by Mr. Alexander, Ameritech Illinois is willing to work with AT&T to resolve them. Am. Ill. Ex. 1.1 (Alexander Rebuttal) at 17-18. In any event, existing alternatives, including use of CFA reports to validate CFA assignments, would allow AT&T to ensure working lines. Id. at 18. AT&T's contention that the third party vendor process is too cumbersome is not well-founded. Am. Ill. Br. at 27-28.

McLeodUSA/TDS want to return to the "good old days" prior to September 11, 2001, when some Ameritech Illinois employees apparently failed to enforce Company security policies by allowing occasional access by McLeodUSA technicians to the MDF when escorted by Ameritech Illinois' central office technicians. McLeodUSA/TDS Br. at 5. They claim that unescorted access by authorized third party vendors presents more of a security risk than escorted access by Ameritech Illinois personnel. McLeodUSA/TDS are incorrect. The certification program for third party vendors ensures that they are knowledgeable and can be trusted to work unescorted at the MDF. Am. Ill. Br. at 27. It also keeps the total number of technicians working in a central office to a manageable level, something that would not be the case if every CLEC with a collocation arrangement could send its technicians in at will. Am. Ill. Br. at 27. Furthermore, much as McLeodUSA may have liked the escort process, Ameritech

Illinois' central office personnel have their own jobs to do: time spent escorting CLEC technicians is time *not* spent on Ameritech Illinois' own central office work.[13]

Collocation Pricing. Staff contends that Ameritech Illinois "just barely" offers collocation at TELRIC-compliant rates. Staff Br. at 90. Staff bases its position on the fact that the Company filed updated cost studies, but not revised tariffs, in compliance with the Commission's order in Docket No. 99-0615. According to Staff, Ameritech Illinois "ought to have filed a tariff based on the new costs." Id. at 91.

Staff's position borders on bad faith. The Commission's order was very specific on when and how new rates would be developed:

> . . . While Ameritech notes that this Commission will have a further opportunity to review Ameritech's collocation costs, we find that future compliance is not an acceptable answer. While we realize they are not perfect, we will adopt Staff's recommended rates. *Upon conclusion of the general investigation into the costing methodology used to price collocation services, Ameritech will be instructed to file tariffs with prices based on the costs approved therein.*
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> * * *
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> (10) . . . Ameritech shall filed new cost studies based on an efficient, forward-looking environment consistent with our conclusions herein within 60 days of the effective date of this Order. In the interim, we adopt Staff's recommendations; Ameritech's prices, as adjusted by Staff are accepted as interim rates until the outcome of the upcoming docket examining the entirety of rates to be charged for collocation.

Aug. 15, 2000 Order, Docket No. 99-0615, at 23, 27 (emphasis added).

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13 McLeodUSA/TDS complain that Ameritech Illinois' requirement that third party vendors be willing to work on its own equipment is unreasonable. McLeodUSA/TDS Br. at 5. Again, this requirement is necessary to keep the total level of technicians in the office at a reasonable level. As of February, 2002, CLECs had 858 physical and 201 virtual collocation arrangements in 150 Ameritech Illinois wire centers. Am. Ill. Ex. 14.0 (Heritage Rebuttal) Sch. DOH-2 at 15.

Thus, Ameritech Illinois complied *fully* with this order by filing the updated cost studies. Am. Ill. Ex. 10.1 (Smith Rebuttal) at 9. The Commission clearly contemplated that *it* would initiate the investigation into these studies and would set permanent rates *after* the investigation was complete. For reasons unknown to Ameritech Illinois, this investigation was never initiated. Under these circumstances, it ill behooves Staff to try to shift the onus to Ameritech Illinois.

Staff also continues to complain that the rates in the GIA are different from those in the tariff. Staff Br. at 92-93. These rates were developed to offer CLECs 13-state collocation arrangements and expanded capabilities (Am. Ill. Br. at 30-31), and they are optional. Any CLEC may take collocation under tariff at the rates approved by the Commission. There is no legal basis for requiring inclusion of the tariffed rates in the GIA. <u>See</u> Am. Ill. Br. at 190-193. Finally, Staff contends that the change which Ameritech Illinois made to its website that provides a hotlink between the GIA and its tariffs is an "improvement," but is still not good enough. Staff Br. at 94. Staff's assertion is not based on filed testimony or the cross-examination of Mr. Alexander; indeed, not a single question was asked by Staff counsel on this issue at the hearings. Therefore, Staff's opinion is extra-record, improper and should not form the basis for any findings in this Phase I order.

<u>The All Equipment List ("AEL") and Power Cabling</u>. Staff continues to address these issues under the federal checklist even though it is not disputed that these issues concern compliance with requirements of state law. In accordance with the ALJ's instructions, we address these issues under the public interest analysis (Section III.D <u>infra</u>).

3. <u>Interconnection Agreement Negotiations</u>

While the Ameritech Illinois/McLeodUSA interconnection agreement negotiation did not go as smoothly as it could have, the facts do not support McLeodUSA's argument that Ameritech Illinois violated its duty to negotiate in good faith and they certainly do not support the more expansive allegation that Ameritech Illinois violates that duty, or checklist item 1, with respect to every CLEC. See McLeodUSA Br. at 9.

First, a sense of perspective is necessary. The Ameritech Illinois/McLeodUSA interconnection agreement is a complex document that is approximately 1,000 pages in length. Am. Ill. Ex. 12.1 (Thompson Rebuttal) at 6. Parties are bound to have some disagreements about some points; nevertheless, while McLeodUSA listed 85 issues in its petition for arbitration, the parties resolved 70 before the hearing. Id. at 3. Further, McLeodUSA agreed to two extensions of the statutory negotiation period, so it cannot claim the process was improperly delayed. Id. at 2. And in the final analysis, the remaining disagreements were arbitrated, the arbitration results were incorporated into the agreement, and the agreement was filed for approval with the Commission. In short, McLeodUSA got an interconnection agreement using the process established by the Act for reaching such agreements.

Second, McLeodUSA's characterization of the negotiation is incorrect. McLeodUSA complains (at 6) that the lead negotiator was not familiar with the existing resale agreement, but the resale agreement was ultimately concluded to McLeodUSA's satisfaction. Am. Ill. Ex. 12.1 (Thompson Rebuttal) at 3. McLeodUSA complains (at 6-7) that it did not need a new hosting appendix, but ultimately agreed to one and included it in the interconnection agreement. Am. Ill. Ex. 12.1 (Thompson Rebuttal) at 4. McLeodUSA complains (at 8) that a working draft of the agreement had over 100 errors, but McLeodUSA concedes that most of these discrepancies were not material (McLeodUSA Ex. 3.0 at 6-7), and all of them were corrected to McLeodUSA's satisfaction (Tr. 682 (Thompson)). Finally, McLeodUSA contends (at 7) that the Ameritech Illinois negotiators had little authority to deviate from the SBC template agreement, but this observation does not bear on the issue of good faith. As Mr. Thompson explained, while

Ameritech Illinois' negotiators do have authority to make binding representations and decisions throughout the negotiation process (Am. Ill. Ex. 12.0 (Thompson Direct) at 4), they are not free to unilaterally create new provisions for interconnection agreements. This is as it should be given that multi-state "MFN" obligations require Ameritech Illinois to coordinate its position with affiliates.

Nonetheless, Ameritech Illinois has implemented significant changes in the negotiation process. Ameritech Illinois negotiators now do more preliminary analysis before the negotiation begins so that they can better understand the existing agreements of the CLEC and better understand the specific issues of importance to the CLEC. Am. Ill. Ex. 12.0 (Thompson Direct) at 3. Ameritech Illinois negotiators also do more detailed project management planning so that internal SBC workgroups (*e.g.*, Regulatory, Contract Management, etc.) can better coordinate their activities. Id. Individual negotiators also receive training to increase their overall effectiveness. Tr. 680-81 (Thompson).

4. Reciprocal Compensation

Staff and AT&T also raise a dispute under this checklist item with regard to Ameritech Illinois' negotiating positions concerning reciprocal compensation, including the ability of carriers to "opt in" to other carriers' compensation arrangements. Staff Br. at 41-54; AT&T Br. at 48-50. We address those issues under checklist item 13.

B. Checklist Item 2: Access to Unbundled Network Elements.

1. Access to UNEs Generally

Checklist item 2 requires a BOC to demonstrate that it provides "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)." Section 251(c)(3) applies to those network elements that pass the statutory "necessary" and "impair" tests and are thus classified as "unbundled" network elements. 47 U.S.C. § 251(d)(2). It requires incumbents to provide "nondiscriminatory access" to those unbundled network elements "at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory." Section 252(d)(1) requires that the rates for UNEs must be cost-based and may include a reasonable profit.

There is no shortage of rules implementing these statutory provisions, and the FCC took much of the First Report and Order and the UNE Remand Order to explain them. The FCC has also addressed compliance with checklist item 2 on numerous occasions, and its most recent section 271 orders contain "statutory appendices" that succinctly state these requirements.

There is no dispute that Ameritech Illinois has demonstrated its legal obligation to provide all of the UNEs identified by the FCC (even though the FCC's list of UNEs has been held too broad by the D.C. Circuit), and that the terms and conditions of those obligations reflect the FCC's rules. Ameritech Illinois showed that its rates for those UNEs comport with the FCC's "TELRIC" rules in its opening brief (at 40-51) and replies further in Section II.B.3 infra. Ameritech Illinois' offering of interfaces to access its operations support systems ("OSS") for ordering UNEs and other wholesale products and services is described at Section II.B.4 of this brief and of the opening brief. Compliance with the Act's nondiscrimination principles is to be demonstrated in Phase II.

It is unclear whether Staff is unsatisfied with the existing rules or has simply chosen to overlook them. For whichever reason, though, Staff asserts that the Commission should now adopt a whole new set of rules for UNEs. Staff's new rules fall under seven categories. Four of these categories – cost, timeliness, quality, and ubiquity – are borrowed by taking words out of context from the UNE Remand Order's "impair" test (which is used to evaluate alternatives outside a proposed UNE to determine *whether* it should be classified as a UNE) and converting them into rules for evaluating Ameritech Illinois' provision of the UNE itself. Staff Br. at 97. Three other categories of rules were created by Staff: provisioning and usage flexibility; accessibility to rates, terms, and conditions; and transparency. Id. at 98-99.

There are any number of reasons why the Commission must reject Staff's proposal. We can start with Staff's own admission that its rules *are* new, and its inability to show that its new rules appear anywhere in any section 271 order. See Staff Br. at 96. The FCC has repeatedly held that section 271 proceedings are not the place to create or modify rules but to examine compliance with existing rules. Kansas & Oklahoma 271 Order, ¶¶ 18-19; Arkansas & Missouri 271 Order, ¶ 82.

Second, Staff's principal source is inapposite. The "impair" standard of 47 U.S.C. § 251(d)(2), both by virtue of the plain language of that statute and its interpretation by the FCC, applies *only* to the determination of whether, in the first instance, a network element should be made available to CLECs on an unbundled basis. It is not a tool for evaluating the provisioning of UNEs after they have passed the impair test. Indeed, the test was designed to evaluate everything *but* the proposed UNE: to determine whether *the alternatives* to the proposed UNE are insufficient such that, without the UNE, a CLEC would be "impaired." Am. Ill. Br. at 35.

Staff vaguely acknowledges that it is tearing the "impair" test from its moorings. See Staff Br. at 96 (noting that impair test is applied "[w]hen evaluating *whether* an ILEC must make network elements available to requesting carriers as unbundled network elements" and is designed to evaluate "the availability of alternative (i.e., self provided or third party provided) network elements to requesting carriers"). But Staff makes no attempt to support the use of that test in the altogether different context of *how* UNEs are to be provided after the "impair" test has been met. Instead, Staff simply asserts that its leap is "self-evident" (Staff Br. at 100) or that the FCC has *already* endorsed it (id. at 98). As for the first assertion, we have shown here a wealth of reasons why Staff's approach is not self-evident. Staff's second assertion is also wrong, as it is based on an egregious mischaracterization of the UNE Remand Order. Staff claims that the FCC found that an analysis of this criteria was necessary to determine whether "*network elements* are actually available as a practical, economic, and operational matter'" and attributes that finding to paragraph 21 of the UNE Remand Order. Staff Br. at 98. The full sentence quoted, however, says that the test is employed not to assess network elements but "in order to determine whether these *alternative sources of network elements* are actually available as a practical, economic, and operational matter." Selective quotation is not legal authority.

Third, Staff's use of the FCC's "impair" test is inappropriate. The D.C. Circuit has held that the test set forth in the UNE Remand Order is too lax and is inconsistent with the 1996 Act. The FCC is now in the process of developing a new test and new rules. Plainly, it would be unwise to attempt to create an entirely new structure on an already shaky foundation. Am. Ill. Br. at 32-33, 35-36.

Fourth, there is no necessity for the invention Staff proposes. The FCC has been evaluating compliance with checklist item 2 in detailed written opinions for over five years, and not once has it used anything like the "impair" test to evaluate checklist 2 compliance. Instead of referring to or relying on the rules the FCC *does* use (which are addressed here or will be addressed in Phase II), Staff acts as if the Commission is writing on a blank slate and has to develop from scratch an entire process for evaluating UNEs. In this vein, Staff grossly mischaracterizes Ameritech Illinois' position, contending (at 100) that "Ameritech's testimony seems to suggest, for example, that if the FCC requires Ameritech to provide UNE loops, Ameritech need only provide something *called* a UNE loop, and that it need not provide the loop at reasonable prices, on a timely basis, may provide inferior quality loops, does not need to specify exactly what it provides, may restrict use of loops in any manner Ameritech sees fit, and need not actually provide loops generally to all carriers."

Ameritech Illinois does provide something called a UNE loop, but it does not contend that is enough. There is no dispute that the prices for loops are reasonable (<u>see</u> Section II.B.3 below), or that Ameritech Illinois' binding interconnection agreements and tariffs define loops in accordance with FCC rules (and thus specify exactly what is provided). Nor does anyone here show that Ameritech Illinois restricts the use of loops, or that it does not provide them to any carrier. <u>See</u> Section II.D <u>infra</u>. And the timeliness and quality of loop provisioning are to be assessed in Phase II. The question here is not whether Ameritech Illinois must demonstrate compliance with *existing* rules for loops or other UNEs (it must), but whether we are to create an entirely new set of rules in midstream – after the FCC has granted 14 applications without those new rules.

Fifth, by taking pieces of the "impair" test out of context and transplanting them into a new test, Staff is effectively *changing* the FCC's methodology:

- Although Staff claims to base its rules on the FCC's "impair" criteria, it did not pick all of those criteria; rather, Staff chose only the criteria it liked. For example, Staff's rules ignore the FCC's consideration of "whether unbundling of a network element promotes facilities-based competition, investment, and innovation" and "whether unbundling of a network element promotes reduced regulation." 47 C.F.R. § 51.317(c)(2), (3). There seems little question that Staff's rules promote more regulation, and encourage unbundling over the creation of new facilities, yet Staff does not address that conflict between its analysis and the "impair" test.

- Three of Staff's factors (flexibility, accessibility, and transparency) do not come from the "impair" test at all.

- Staff's test apparently creates a separate checklist within the checklist, wherein a failure to meet any one factor automatically causes Ameritech Illinois to fail the checklist item. The FCC did not view any of the elements it considered as a part of the impair standard as independently determinative and emphasized that it was evaluating the "totality of the circumstances." UNE Remand Order, ¶ 62.

All of the above deficiencies in Staff's approach coalesce when one sees that Staff's results do not just *add* new unbundling rules, but actively conflict with the FCC's existing rules. Under the heading of "cost," Staff complains that Ameritech Illinois' UNE offerings do not comply because of concerns about price "uncertainty": specifically, Staff contends that interim rates expose CLECs to too much uncertainty. Staff Ex. 3.0 (Zolnierek Direct) at 72.[14]

Staff cites paragraph 114 of the UNE Remand Order to support its conclusion that rates must be certain. Staff Br. at 101. But that paragraph does not say that interim rates are inappropriate; in fact, it does not say anything about any rates at all. The FCC's reference to "certainty" was addressed to its view that a national list of UNEs would provide CLECs with certainty as to *what* elements would be available, not their price. See UNE Remand Order, ¶ 125 ("We find that a national list of unbundled elements will … provide competitive LECs with certainty regarding the *availability* of network elements.") (emphasis added). Even in that

[14] Staff's analysis of uncertainty is also wrong as a factual matter. As described under Section II.B.3 in Ameritech Illinois' opening brief and below, the vast majority of Ameritech Illinois' rates are not interim but permanent.

context, the FCC did not view certainty as an overriding value the way Staff does: After all, the FCC announced at the same time that it would reexamine the list of UNEs every three years (id., ¶ 151) and that review is underway. And the D.C. Circuit gave even *less* weight to the interest of certainty, finding that that criterion alone was not even sufficient to support the FCC's national list of UNEs in the first place. United States Telecom Ass'n v. FCC, 290 F.3d 415, 422 (D.C. Cir. 2002).

But the conclusive confirmation that Staff's approach to "certainty" is inappropriate lies in the erroneous conclusion to which it leads. Staff's ultimate goal in transplanting the FCC's reference to "certainty" is to create a rule that UNE prices fail to comport with section 271 if they are interim or uncertain. If the FCC had truly intended to create such a rule, one would have expected to see that rule appear somewhere in one of the many orders the FCC has issued under section 271. Quite the opposite: The FCC has expressly rejected Staff's view. See Section II.B.3 infra.

2. UNE Combinations

Staff has admitted (at 114-119) that the tariff Ameritech Illinois filed to comply with the Commission's April 30, 2002 Order on Reopening in Docket No. 98-0396 has mooted Staff's original concerns regarding the availability of UNE combinations migrations and new UNE combinations.[15] See also Aug. 23, 2002 Stipulation to Eliminate Issues, ¶ 2(g)-(h). Now, however, Staff alleges that Ameritech Illinois lacks provisioning intervals and performance measures for UNE combinations. Staff Br. at 116. While Ameritech Illinois did not present any

15 Staff continues to allege that there is "confusion surrounding Ameritech UNE combination rates." Staff Br. at 116. However, the only "confusion" that Staff refers to is the fact that some rates are interim instead of permanent. Id. We address these Staff-proposed and Commission-approved interim rates in Section II.B.3 below.

record evidence of such measures, that is not because they do not exist. Rather, as Staff knows full well, performance measure issues have been deferred to Phase I(b). But just so there is no misunderstanding, Ameritech Illinois' existing tariff contains numerous standards and measures (including installation intervals) for UNE combinations (see Ill. C.C. Tariff No. 20, Part 2, Sec. 10, Sheets 101-140.1) and the parties are supplementing those measures in the current "six-month review."

AT&T asserts (at 102-104) that Ameritech Illinois does not offer or support "as is" UNE-P migrations. As an initial matter, it should be made clear what is and is not alleged here. AT&T does not allege that Ameritech Illinois fails to offer UNE-P migrations where the CLEC can retain all the end user's service features. Ameritech Illinois indisputably does offer such migrations, as Staff notes (at 114-115). At issue is only the order form for such migrations – whether Ameritech Illinois must overhaul its systems so CLECs can check an "as is" box on the order form, instead of the current process where a CLEC lists the end user's current services. Am. Ill. Br. at 72. In that regard, AT&T does not allege that the current ordering process is discriminatory, or that it differs from industry standards, or that AT&T ever asked for an "as is" box during the change management process. In fact, Ameritech Illinois' current ordering processes reflect months of negotiations with the CLEC community in state-supervised collaboratives. See Am. Ill. Response to ALJ On the Record Data Request 16. Tr. 1260-1261 (Cottrell). Further, AT&T does not allege that the current order form has hindered the ordering or provisioning of UNE-P in any competitively significant way. AT&T could not make any such allegation, given the sheer volume of UNE-Ps that it and other CLECs have ordered in recent months. See Am. Ill. Br. at 11.[16]

Finally, AT&T does not allege that any federal law, FCC rule, or FCC order requires the use of an order form with an "as is" box. AT&T's sole support is 220 ILCS 5/13-801(d)(6). AT&T Br. at 102. That state law, however, only refers to the substantive provisioning of the end user's existing features; it does not require the use of any particular order form.[17] AT&T is improperly attempting to graft on a requirement that Ameritech Illinois use AT&T's desired order form for that product. AT&T's allegations are irrelevant and inappropriate here, for they do not concern compliance with the federal checklist. It is even less appropriate for AT&T to attempt to use this section 271 proceeding to expand the requirements of state law.

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[16] As a matter of good business practice, CLECs should specify the unbundled network elements they wish to have included in their UNE-P arrangements. This process ensures that CLECs know and understand exactly what they have ordered, and it avoids future misunderstandings over what unbundled network elements were requested and what network elements were actually being provided (and billed).

[17] Ameritech Illinois' tariff describes an "as is" conversion, and compares it to an "as directed" conversion, as follows: "Conversion of an existing Ameritech Illinois access line to UNE-P with loop and line port combinations 'as is,' (i.e. conversion to UNE-P with the same features and functions the line had when it was provided by the Company to the end user) or 'as directed,' (i.e., with different, additional, and/or fewer features and functions [than] the line had when it was provided by the Company to the end user)." Tariff Ill. C. C. No. 20, Part 19, Section 15, 3rd Revised Sheet No. 9. This language (which previously appeared on 4th Revised Sheet No. 2) was originally proposed by Staff and adopted by the Commission in Docket No. 98-0396. April 30, 2002 Order on Reopening, Docket No. 98-0396.

3. Pricing

Ameritech Illinois provides hundreds of wholesale products and services to CLECs, and the rates for many of them consist of several different sub-elements. If one were to consider the question of pricing solely by reading the Staff and intervenor briefs, one would think the vast majority of all those rates were created by Ameritech Illinois and never reviewed by the Commission. As a result, one might wonder what the Commission had been doing the last six years. The reality is just the opposite of the intervenors' portrayal. Rates for the vast majority of wholesale products and services have been aggressively reviewed by the Commission, and the resulting rates are among the lowest in the country – and in certain significant cases (*e.g.*, the loop and the UNE Platform) *the absolute lowest*. Am. Ill. Br. at 42-43; Section II.B.3.b, infra. The rates that have been approved cover the elements that are most in demand, such as the local loop in all its flavors, as well as the elements of the UNE Platform. Thus, outside this proceeding AT&T expressly "applaud[ed]" the Commission for its UNE decisions (Am. Ill. Cross Exs. 27, 28), and numerous competitors have entered the local market using UNEs at the Commission-approved rates.

Staff, AT&T and WorldCom are trying to make the tail wag the dog. They focus on the rates for a few components or products that are interim, or otherwise have not yet been investigated by the Commission – even though most of these rates were not developed by Ameritech Illinois but by Staff or the CLECs. WorldCom and AT&T even contend that the "uncertainty" of those few rates is so great as to preclude checklist compliance altogether. See AT&T Br. at 33-34; WorldCom Br. at 8, 16-17. For instance, AT&T alleges that uninvestigated and interim prices cause uncertainty that "hampers competitive activity" and that without more "certainty" competitors cannot "decid[e] whether or not to enter the local service business." AT&T Br. at 33-34. Ameritech Illinois demonstrated in its opening brief (at 45-48) that its interim rates are reasonable and do not affect checklist compliance, and responds further below. The short answer to AT&T's allegations is that AT&T and several other CLECs already *have* decided to enter the local service business – on a large scale – and AT&T has expressly cited the existing prices as a very important factor in that decision. See Am. Ill. Br. at 41. Whatever uncertainty exists cannot be as substantial as the intervenors contend, so this is simply another instance in which the CLECs' rhetorical reach exceeds their factual grasp.

a. Possible Future Rates

The intervenors' pervasive theme on pricing is not whether current rates are *correct* but whether they are "certain." Taken at its face value, the "certainty" that the intervenors demand would mean that no BOC could ever receive section 271 approval as long as there was the slightest possibility that rates could ever change. And that is exactly where the intervenors go, with AT&T and WorldCom arguing that even Commission-approved permanent rates are insufficient for section 271 purposes, merely because Ameritech Illinois might propose higher rates or prevail in obtaining higher rates on judicial review. AT&T Br. at 36-37; WorldCom Br. at 15-16. But in the "rapidly evolving telecommunications market" (Texas 271 Order, ¶ 87), the kind of "certainty" the intervenors seek is not feasible, reasonable – or lawful. The 1996 Act does not require prices that are set in stone, but prices that are based on cost.

Therefore, the FCC has conclusively rejected the intervenors' attempts to elevate certainty over accuracy. When the FCC considered Verizon's application for Massachusetts, that state's commission was in the process of reviewing (and potentially changing) *all* UNE rates. Massachusetts 271 Order, ¶¶ 19, 35-36. The FCC emphatically rejected arguments that this potential uncertainty had any bearing on section 271 approval in general or on checklist item 2 in particular (id. ¶ 36):

> We find the concerns of the commenters regarding the pending UNE cost proceeding before the Massachusetts Department to be unwarranted. As discussed above, the fact that a state may conduct a rate investigation and change the rates in the future does not cause an applicant to fail the checklist item at this time. Indeed, rates may well evolve over time to reflect new information on cost inputs and changes in technology or market conditions. The Massachusetts Department has expended an extraordinary amount of effort in its *Consolidated Arbitrations* and other rate-making proceedings. We applaud the Massachusetts Department for the tremendous amount of work it has done, and we expect that it will adopt appropriate cost-based UNE rates in its current proceeding.

Moreover, the intervenors are overlooking one thing that *is* certain: Whatever Ameritech Illinois might propose, the Commission-approved rates will remain in effect until the Commission or a court decides to establish new rates. That order will come at another time and in another proceeding. For this reason as well, the FCC has rejected the intervenors' position. In the Maine 271 proceedings, AT&T and WorldCom argued that Verizon's prices did not comply with the checklist because Verizon would likely propose a new rate for daily usage files ("DUFs") in the near future. There, as here, AT&T and WorldCom predicted that the proposal would be too high, citing the BOC's past filings in other states. See AT&T Br. at 40-46; WorldCom Br. at 16; Maine 271 Order, ¶¶ 23-24. The FCC first found that the potential uncertainty associated with a future proposal was irrelevant, given that any actual proposal would not be imposed unilaterally by the BOC but would instead be subject to the review of a state commission that had demonstrated its commitment to TELRIC principles (a commitment that this Commission indisputably shares):

> We do not credit AT&T's contention that there is "nothing to stop Verizon from proposing another DUF rate at any time in the future." If Verizon adopts a DUF rate in the future, that rate will be submitted to the Maine Commission for consideration and approval, which, as we have stated, has demonstrated a commitment to TELRIC principles. Thus, Verizon may not unilaterally propose another DUF rate and charge competing LECs accordingly, as AT&T suggests.

Maine 271 Order, ¶ 23 (footnotes omitted). The FCC then refused to consider WorldCom's prediction that the new proposal would be too high, finding such allegations to be premature and holding that it would be improper to make a finding of non-compliance based on rates that were not even in existence (id. ¶ 24):

> We also conclude that WorldCom's concern regarding Verizon's anticipated DUF rate is premature. WorldCom presumes that Verizon will file a tariff containing a DUF rate that is excessive and non-TELRIC based, as WorldCom claims Verizon has done in other states, such as Rhode Island, Massachusetts, and Vermont. WorldCom claims that Verizon's DUF rates in other New England states contain TELRIC errors and presumes that the future Maine rate will have similar errors. Obviously, however, we are unable to assess a rate that does not exist during the period that we review the section 271 application, much less make a finding of checklist noncompliance based on such a rate. Moreover, as we stated above, to the extent Verizon proposes a DUF rate that is excessive and non-TELRIC based, WorldCom will have an opportunity to challenge that rate at the state level.

b. Interim Rates

AT&T and WorldCom complain about the existence of a few interim rates, but neither one acknowledges – much less addresses – the FCC's standards for evaluating interim rates. See Am. Ill. Br. at 45-48. Rather, they assert that the mere existence of any interim rates bars a finding of checklist compliance because it creates "uncertainty" and because interim rates have not been found "TELRIC-compliant." AT&T Br. at 106-108; WorldCom Br. at 16.

But as demonstrated in Ameritech Illinois' opening brief (at 46), the FCC applies a reasonableness standard for interim rates, and that standard has been met. The CLECs' allegations do not rebut, and are not even relevant to, the FCC's standard. Staff is the only party to mention the FCC's three-part interim rate test (Staff Br. at 90-91) – and it correctly notes that "[t]he FCC has determined that, for Section 271 purposes, TELRIC compliant rates need not be permanent." Id. at 91. Thus, the only time that Staff expressly applies the FCC's test, it concludes that Ameritech Illinois' interim collocation rates comply with the checklist. Id. Staff apparently concedes that Ameritech Illinois' other interim rates (like those for certain UNE combinations) also comply with the checklist, because even while Staff echoes the CLECs' claims about "rate uncertainty" (Staff Br. at 102), Staff does not agree that those claims affect checklist compliance. Rather, Staff argues that "rate uncertainty" comes into play under the public interest analysis. Staff Br. at 102, 238-245. But the FCC has already rejected the intervenors' position, holding that interim rates can be acceptable and that "uncertainty" about the outcome of "unresolved, fact-specific disputes" does not undermine a section 271 application. Texas 271 Order, ¶ 87; see also Kansas & Oklahoma 271 Order, ¶ 222 (holding that interim prices and the "uncertainty" they may create do not affect section 271 compliance because "carriers should expect to be affected by future resolutions of disputed issues").

Non-recurring Charges for New UNE Combinations. WorldCom (at 16) and AT&T (at 105-108) assert that Ameritech Illinois should not receive section 271 approval because it uses interim rates for the nonrecurring charges ("NRCs") on "new" UNE combinations. AT&T goes so far as to assert (at 105-108, 133, 138) that these rate elements are so bad that they cause Ameritech Illinois to fail all four checklist items that relate in any way to the UNE Platform: not just UNE combinations (item 2 – UNEs), but the constituent elements of the platform (item 4 – loops, item 5 – transport, and item 6 – switching). Thus, the first and most important task is to put this issue into perspective.

First, no party disputes the existing, Commission-approved prices for the constituent elements of the UNE Platform: the loop, switching, and transport. Nor could there be any legitimate dispute: The monthly rate for a loop in Chicago (Access Area "A") is $2.59; the rate for switching is approximately $2.10-$2.15; and the rate for transport is 16 cents.[18] Add in the

[18] See Am. Ill. Ex. 15.1 (Johnson Surrebuttal) Sch. RJJ-1 and RJJ-2. The rates for switching and transport are based on the Commission's July 10, 2002 Order in Docket No. 00-0700, and assume 1400 minutes of use per month. Note that the recurring rate for a loop in Access Area B, which covers most metropolitan areas outside of Chicago in the Ameritech Illinois service area, is $7.07. Thus, the rate for a UNE Platform in that area is less than $10.

rates for providing customer usage files (45 cents) and cross-connect charges (14 cents), and the recurring charge for Chicago UNE Platforms (existing or "new") is approximately $5.49 – *by a wide margin the lowest rate in the country*.[19] In fact, the monthly price of an entire platform is about the same as one ticket for a matinee movie.

Second, no party raises any dispute concerning the Commission-approved non-recurring rates for UNE Platforms that are comprised of pre-existing combinations of UNEs. This is the most common and familiar context for UNE-P, in which a customer "migrates" his or her existing service from Ameritech Illinois to a CLEC. Again, the lack of any dispute is not surprising. The one-time charge to set up an existing UNE-P is only $1.02 – less than the price of popcorn.

Thus, the dispute centers on the one-time charges that recover the costs Ameritech Illinois incurs to combine elements that are not already combined and create a *new* UNE-P (*e.g.*, for a new or additional line). But here too, there is no room for any serious dispute. Those charges consist of (i) the same, Commission-approved $1.02 service order charge that applies to "existing" UNE-P; and (ii) a Commission-approved line connection charge of $20.21. See April 30, 2002 Order on Reopening, Docket No. 98-0396, at 10; Am. Ill. Ex. 10.2 (Smith Surrebuttal) at 2. Staff proposed that these numbers (which were developed by CLECs, not Ameritech Illinois) be used; the Commission agreed in its Order on Reopening in Docket No. 98-0396; and

[19] See Am. Ill. Ex. 15.1 (Johnson Surrebuttal) Sch. RJJ-2 at 7 (showing the next lowest UNE-P rate to be New Jersey's $12.89).

"Ameritech dutifully revised its tariffs to comply with the Commission's Order and thus, in Staff's opinion, has complied with the Commission's Order on Reopening."[20] Staff Br. at 102.

The only thing "interim" about the rate is that the Commission recognized it did not address some costs (principally, those associated with port connection), and it allowed for the possibility that Ameritech Illinois might furnish cost studies for those missing elements in the future. April 30, 2002 Order on Reopening, Docket No. 98-0396, at 10-11, 34. In substance, then, the Commission has investigated and approved the rates that are now in effect, and it has established an interim rate of *zero* for certain rate elements. Any additional rate for those elements will be investigated and approved before it goes into effect, and it will be applied only prospectively. See id. There is no basis for the CLECs to dispute the Commission's approach. The only possible deviation from TELRIC is that the current rates are too low. Indeed, Ameritech Illinois' non-recurring charges for new UNE-P are nearly three times lower than analogous rates that the FCC found reasonable for Oklahoma ($64), Kansas ($62), and Arkansas ($62), and they are nearly twice as low as the rates for Missouri ($46) and Texas ($39). Arkansas & Missouri 271 Order, ¶¶ 71 & 75.[21] Further, the only party that is disadvantaged by the lack of a true-up is Ameritech Illinois. See April 30, 2002 Order on Reopening, Docket No.

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[20] Contrary to AT&T's suggestion (at 105-108), the Order on Reopening approved interim rates for new EELs, as well as special access to EEL conversions and new UNE-Ps. The Commission adopted Staff's and Ameritech Illinois' proposal that "the company's currently effective non-recurring charges, as amended in the manner proposed by Staff" serve as interim rates for UNE combinations, including EELs. April 30, 2002 Order on Reopening, Docket No. 98-0396, at 11. In fact, "all parties were in agreement that the prices in section 15 and 22 of Ameritech's tariff [where EEL-related charges are found] . . . , as modified by Staff's revised Exhibits 2 and 5, would serve as interim prices until a case deciding permanent rates was finished." Id.

[21] The non-recurring rates in Arkansas are identical to those in Kansas. Id. ¶ 75.

98-0396, at 10 (noting that "[a]s a concession to Staff and the CLECs," Ameritech Illinois "agreed to forego the opportunity for a true-up"); see also Maine 271 Order, ¶ 5 ("[W]e find that a zero rate is reasonable under the circumstances because it affords competitors the benefit of the doubt on the rates, subject to the possibility that the Maine Commission will approve a . . . rate of greater than zero in the future. . . . The zero rate also eliminates the need for refunds or true-ups once permanent rates are established.").

Rates for the end-to-end "Broadband UNE". Staff asserts (at 143-144) that the interim rates established in Docket No. 00-0393 "appear . . . to be defective." Staff does not explain the basis for this assertion – perhaps because the interim rates for the end-to-end "Broadband UNE" were all proposed by Staff, not Ameritech Illinois (March 28, 2002 Order on Second Rehearing, Docket No. 00-0393, at 25) as was the rate of zero for OSS modifications (Sept. 26, 2001 Order on Rehearing, Docket No. 00-0393, at 48). In any event, Staff does not allege that these rates affect checklist compliance.

AT&T also complains that rates for the end-to-end "Broadband UNE" are only interim, and that cost-based rates have not yet been established. AT&T Br. at 127. But like Staff, AT&T can hardly argue that the interim rate is not reasonable: AT&T supported Staff's proposed interim rate, so much so that it urged the Commission not to allow for any true-up. March 28, 2002 Order on Second Rehearing, Docket No. 00-0393, at 22-24.

c. Not-Yet-Approved Rates

Staff, RCN and AT&T continue to complain about the rates for three relatively new products that the Commission has not yet investigated (rates for dark fiber, subloops, and CNAM queries), and assert that Ameritech Illinois cannot receive 271 approval until these rates have been investigated and approved. Staff Br. at 144-148; AT&T Br. at 130-133, 139-140; RCN Br. at 22-24. Predictably, these intervenors have ignored the FCC's holdings that section 271 applications should not be held hostage by a few unresolved rate disputes. See Texas 271 Order, ¶ 87; Kansas & Oklahoma 271 Order, ¶¶ 222, 238. As explained below, even if the Commission decides to open an investigation concerning these rates, they do not affect checklist compliance.

Subloop and Dark Fiber Rates. Staff (at 144-148) and AT&T (at 130-133) assert that section 271 approval can not be granted until Ameritech Illinois' rates for subloops and dark fiber have been investigated and approved. Ameritech Illinois responded to these assertions in its opening brief (at 48-51) and showed that they are wrong. In any event, this is precisely the kind of "unresolved, fact-specific dispute" that should not serve to delay the section 271 process. See Texas 271 Order, ¶ 87. The rates that are challenged now were filed nearly a year and a half ago, and in that time no investigation has been opened. See Am. Ill. Br. at 48. A likely reason why is that there has been virtually no demand for subloops anywhere in the country (Am. Ill. Ex. 10.2 (Smith Surrebuttal) at 5), and demand for dark fiber has been similarly low (Am. Ill. Ex. 1.1 (Alexander Rebuttal) at 50), so concerns over their pricing are little more than theoretical.

CNAM Query Rates. RCN (joined by AT&T, at 139-140, a late arrival to the CNAM party) asserts that section 271 approval should be withheld until the Commission investigates Ameritech Illinois' CNAM query rates. RCN Br. at 22-24. However, like subloop and dark fiber rates, CNAM query rates have been on file for nearly a year and a half. Am. Ill. Br. at 48.

The intervenors' attempt to challenge CNAM rates now is also unfounded. In claiming that Ameritech Illinois' CNAM query rates are too high, RCN points to rates in New York, Maryland, and Massachusetts. RCN Br. at 22-23. However, as Staff noted, this type of comparison may not be particularly useful given that the "[d]emographic, cost, and regulatory environments that affect these rates vary considerably from state to state." Staff Br. at 148. Thus, Staff chose to compare Ameritech Illinois' rates with those in Michigan, because of the "similarities in rate structures" in those two states. Id. AT&T also notes that Ameritech Illinois has a "comparable rate structure" to Ameritech Michigan's, and that the Michigan "CNAM rates have been investigated by the Michigan Commission." AT&T Br. at 132. But after advocating such a comparison, neither party actually follows through and lays out the numbers. Those numbers show that, although Staff (at 152) and AT&T (at 132) are technically correct that CNAM rates are higher in Illinois, the rates are substantially the same. The CNAM query rate in Michigan is $0.0093985, while the rate in Illinois is $0.009942. Am. Ill. Ex. 1.2 (Alexander Surrebuttal) Sch. SJA-4 at 3.

Non-recurring Rates for Line Splitting. AT&T asserts that Ameritech Illinois has not proposed prices for line splitting. AT&T Br. at 128-130. (See Section II.D.2(a) for discussion of line splitting generally.) It is not clear what AT&T really wants. On the one hand, AT&T alleges (at 128-30) that Ameritech Illinois *should* have separate "line splitting" prices and that the absence of such prices means it does not satisfy the checklist. But on the other hand, AT&T alleges that there should *not* be any separate "line splitting" rates and that Ameritech Illinois does not satisfy the checklist unless line splitting is "charged for [at the same rate] as UNE-P." AT&T Br. at 112. Neither argument affects checklist compliance.

First, AT&T's demand for "line splitting" rates is unfounded. Line splitting is not a UNE; it is an activity that *CLECs* engage in *using* UNEs provided by Ameritech Illinois, along with a splitter and Digital Subscriber Line Access Multiplexer ("DSLAM") to separate voice and data traffic.[22] Am. Ill. Ex. 3.1 (Chapman Rebuttal) at 34. Thus there is no applicable "charge"

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[22] In some cases, a CLEC may engage in line splitting using a splitter provided by Ameritech Illinois. To the extent AT&T is contending that the price for splitters does not comply with TELRIC, its argument fails because a splitter is not an unbundled network element, (cont'd)

for line splitting *per se*. Rather, Ameritech Illinois applies the Commission-approved, TELRIC-compliant rates applicable to the underlying UNEs regardless of how the CLEC uses them. Id. For instance, a CLEC purchasing a DSL-capable loop will pay the Commission-approved rate for a DSL-capable loop, whether or not the CLEC uses the loop for line splitting. Am. Ill. Ex. 3.2 (Chapman Surrebuttal) at 31.[23]

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and need not be priced using the TELRIC pricing rules. See Section II.D.2(a) infra. Thus, the rates for splitters do not bear on compliance with the federal checklist.

23 AT&T's reference to pricing discussions that have been held in Michigan (AT&T Br. at 129) is inapposite, as those discussions concern pricing for new product offerings (such as a proposed "low frequency portion of the loop" network element) that are not applicable to Illinois. Am. Ill. Ex. 3.2 (Chapman Surrebuttal) at 31; Tr. 397 (Chapman).

4. Non-Discriminatory Access to OSS

Ameritech Illinois and its affiliates have made extensive efforts to enhance operations support systems ("OSS") and to address CLEC concerns in this area. Although most of the intervenors comment on OSS, they barely even try to dispute Ameritech Illinois' *prima facie* evidentiary showing, which demonstrated that Ameritech Illinois offers sufficient interfaces to provide CLECs access to the same OSS functions Ameritech Illinois provides for its own use. See Kansas & Oklahoma 271 Order, ¶ 105. Indeed, Staff and AT&T overlook that half of the FCC's analysis, claiming that the only question is one of performance (Staff Br. at 123-126; AT&T Br. at 71-72): whether the OSS are operationally ready, as a practical matter, based on results of "actual commercial usage" and "the results of carrier-to-carrier testing, independent third-party testing, and internal testing." Kansas & Oklahoma 271 Order, ¶ 105. True, that is the only *disputed* half of the OSS coin, but that dispute is for the Commission to address in Phase II, and the Commission should not ignore the undisputed fact that Ameritech Illinois provides the required OSS interfaces.

Most of the intervenors' comments on OSS come too soon, as they do not contest the interfaces or OSS functions that Ameritech Illinois currently provides but instead complain about Ameritech Illinois' performance (usually its speed) in providing them. WorldCom Br. at 19-30; RCN Br. at 11; XO Br. at 7-11; McLeodUSA/TDS Br. at 11-13. Ameritech Illinois agrees that OSS performance issues are important, and showed in its opening brief that it has investigated and appropriately addressed the issues raised by the CLECs. Am. Ill. Br. at 60-71, 77-91. The CLECs themselves acknowledge those efforts. See WorldCom Br. at 21 (recognizing that the issuance of completion notices "has certainly improved"); id. at 23 ("Ameritech has certainly made improvements to its systems"); RCN Br. at 18; McLeodUSA/TDS Br. at 9. But a decision by the Commission on such issues cannot be made in this phase of the proceeding; it must instead await Phase II, where the Commission will have the benefit of examining commercial performance data and OSS testing as a whole. Am. Ill. Br. at 52. Staff and AT&T both agree: Staff (at 124) points out that "[t]he majority of these [OSS] issues will be addressed in Phase 2 of this proceeding, as agreed upon by the parties at the outset of this proceeding," while AT&T (at 71) disclaims any "intent to litigate in Phase I of this proceeding . . . issues more appropriately dealt with in Phase II."

While AT&T otherwise recognizes the need to wait for Phase II, it tried to stage a premature "trick play" at the Phase I hearing. The tactic went as follows: AT&T asked Ameritech Illinois witness Mr. Cottrell whether he would change his opinion that the OSS were nondiscriminatory if the various "exceptions" and "observations" noted thus far in the OSS test were "found valid." Tr. 1014 (Cottrell). Now, if this were Phase II, Ameritech Illinois would have presented evidence – including commercial performance data, which the FCC deems to be "the most probative" evidence on OSS (Georgia & Louisiana 271 Order, App. D, ¶ 31) – to show how it had responded to those observations and exceptions, and to show why any unresolved issues (if any) were not material to the overall conclusion on OSS even if KPMG's position were "valid." Mr. Cottrell is familiar with those facts, having actively worked as a project manager on Ameritech Illinois' responses to KPMG's questions, observations, and exceptions throughout the OSS test. See Am. Ill. Ex. 4.0 (Cottrell Direct) Sch. MC-1, ¶ 1. The evidence, however, is not in the record now, because the Commission does not have Phase II before it now. AT&T counted on that fact, and its plan was to make it look as though Mr. Cottrell had no evidence to support his conclusion (that the test exceptions and observations did not change his opinion on OSS) and that he was refusing to acknowledge problems or qualify his opinion "under any circumstances" – or, in AT&T's lingo, he was a totem stubbornly trying to "see no evil, hear no evil, speak no evil." AT&T Br. at 73-74.

AT&T's tactic backfired, however, when Mr. Cottrell did not play along. First, contrary to AT&T's assertion, Mr. Cottrell *was* candid in acknowledging Ameritech Illinois' responsibility for past problem areas where appropriate, in testimony and on the transcript. See Am. Ill. Ex. 4.1 (Cottrell Rebuttal) at 2-14, 26, 40; Tr. 1065-76. The issue here is not whether OSS have always been *perfect* or problem-free, but whether they are nondiscriminatory. New York 271 Order, ¶¶ 176-177.

Second, instead of sticking to AT&T's playbook, Mr. Cottrell began to explain *why* he did not change his conclusion based on the OSS test, or in his words "to set all of these now in perspective for you." Tr. 1024 (Cottrell). AT&T moved to block Mr. Cottrell from saying anything other than the "yes" or "no" it had scripted, and the ALJ correctly declined, reasoning: "I'm not going to allow that. I'm going to allow him to give a full and complete answer. He's certainly entitled to give a basis for a yes or no." Id. Mr. Cottrell then summarized that basis. After describing the difference between KPMG's "observations" (issues that might lead KPMG to find a problem) and "exceptions" (issues that KPMG deemed to be a problem), Mr. Cottrell explained (Tr. 1025):

> When you look at . . . all the testing KPMG has done over the last year and a half of our systems and processes, my testimony would still stand because when you put it in perspective of what we offer to CLECs on an ongoing basis, based on all the commercial volume and all the orders and pre-order traffic that goes through your system . . . absolutely my testimony stands as is.

The ALJ then asked a follow-up question: "Are these 29 [KPMG] exceptions all equal in weight and scope?" and Mr. Cottrell responded, "Absolutely not." Tr. 1027. AT&T's brief ignores his explanation – so if anyone is refusing to "see no evil, hear no evil, speak no evil" here (AT&T Br. at 73), it is AT&T.

The real question, though, is not whether Mr. Cottrell is committed to his conclusion, but whether he is right. The Commission's answer to that question must await Phase II. For present purposes, it is worth noting that the FCC shares Mr. Cottrell's approach. The FCC has held generally that commercial performance data, not OSS test results, are the "most probative" evidence of checklist compliance; it considers test results where "sufficient and reliable data on commercial usage" are "[a]bsent." Georgia & Louisiana 271 Order, App. D, ¶ 15. Thus, the FCC has held that the pendency of an OSS test (or the existence of open exceptions, "valid" or no) do not in and of themselves affect compliance. Id. ¶¶ 19, 106.[24]

* * *

Where complaints about performance and the OSS test come too soon, other CLEC comments come too late, as they dwell on past OSS offerings rather than the current OSS interfaces and functions. WorldCom takes this approach to its illogical extreme when it contends (at 18-19) that the Commission should construct a time machine and decide whether Ameritech Illinois provided nondiscriminatory access to OSS on *January 1, 1997* – over five years ago. WorldCom is essentially arguing that the OSS as they stand now are irrelevant – and that the time, effort, and money that have and will be spent on testing today's OSS have all been wasted.

[24] In the Georgia & Louisiana 271 Order, the FCC found BellSouth's OSS to be nondiscriminatory notwithstanding AT&T's contention that KPMG's audit of Georgia performance data was still in progress, and even though there were open exceptions identified in KPMG's ongoing test of BellSouth's similar OSS interfaces in Florida. Id. ¶ 19 ("While the current audit has generated exceptions, the record demonstrates . . . that the problems identified have had, for the most part, only a small impact on the data presented to us. We recognize that BellSouth's data continues to be subjected to third-party audit, but we cannot as a general matter insist that all audits must be completed at the time a section 271 application is filed at the Commission."); id. ¶ 106 (finding that "commenters have not provided sufficient evidence demonstrating a systemic problem with BellSouth's OSS or why the exceptions and observations from the Florida test require us to deny BellSouth's section 271 application").

The FCC has never adopted this theory. To the contrary, it evaluates OSS as of the date of the BOC's application, not as of the 1997 cutoff proposed by WorldCom. New Jersey 271 Order, App. C, ¶ 14. Indeed, if WorldCom's theory were the law, the FCC would not have given BellSouth section 271 approval for Louisiana (as it did earlier this year), because in 1998, the FCC found twice that BellSouth did not provide nondiscriminatory access to OSS (Louisiana 271 Order, ¶ 22; Second Louisiana 271 Order, ¶ 91). In WorldCom's view that would have been a conclusive bar for the rest of time. The FCC, however, assessed BellSouth's OSS in 2002, as of 2002, and found that BellSouth satisfied the checklist. Georgia & Louisiana 271 Order, ¶ 101.

AT&T's approach is more subtle but no more relevant. AT&T complains about the OSS prior to the March 2001 implementation of Local Service Ordering Guide version 4 ("LSOG 4"), by contending that until those enhancements were implemented, the OSS "provided virtually the same functionality that was in place in August of 1997 when the FCC rejected [Ameritech's] 271 application for Michigan." AT&T Br. at 76. That allegation is both irrelevant (because the purpose of this proceeding is to address OSS as they exist now, not as they existed years ago) and incorrect. Ameritech Illinois implemented enhancements before March 2001, including (1) a series of new pre-order functions like DSL loop qualification (implemented April 2000), (2) additional ordering methods (such as direct ordering via the TCP/IP Internet protocol), (3) improvements to streamline the ordering process (such as a feature that allows CLECs to order a loop with long-term number portability in a single order, implemented June 1999), and (4) electronic ordering of new products, such as the UNE Platform (implemented October 1999). Am. Ill. Ex. 4.1 (Cottrell Rebuttal) at 14-16. AT&T's real complaint is one of formality: namely, Ameritech Illinois did not specifically number its releases using the industry nomenclature "LSOG 2" or "LSOG 3" and so forth. In substance, however, Ameritech Illinois did not lag behind industry standards. Many of the pre-2001 enhancements were implemented *before* the related industry standard took effect, and that is why they were not tied by number to a specific LSOG version. Id. at 15-16. More fundamentally, AT&T itself shows that its revisionist history is moot when it acknowledges the implementation of LSOG 4 and the extensive other OSS commitments entered into by Ameritech Illinois as a condition of this Commission's approval of the SBC/Ameritech merger in 1999. AT&T Br. at 77-78.

AT&T's complaints about the implementation of LSOG 4 in 2001 are also obsolete. Ameritech Illinois addressed the implementation of LSOG 4 in its opening brief (at 96-97) and responds further to AT&T's arguments below. But the bottom line is this: Ameritech Illinois implemented LSOG 4 over a year ago. At the time of the implementation, neither AT&T nor any other CLEC invoked its right to seek dispute resolution under the agreed change management plan that governs OSS updates. Am. Ill. Ex. 4.0 (Cottrell Direct) Sch. MJC-1, ¶ 205. And after the implementation of LSOG 4.0, AT&T has tested and is actively using LSOG version *4.2* in at least three Ameritech states. Am. Ill. Br. at 53-55.

a. Ordering: Line Loss Notices

Ameritech Illinois already addressed the disputed issues and corrective actions taken regarding line loss notifications ("LLNs") at length in its opening brief (at 64-70), and will not repeat that discussion here. Rather, Ameritech Illinois will focus first on where there is at least some agreement:

1. Ameritech Illinois and its affiliates have devoted extensive resources to resolving line loss issues, and performance has improved. Am. Ill. Br. at 65-69; Z-Tel Br. at 7; Tr. 1635-36 (Walters).

2. Ameritech Illinois and its affiliates have kept CLECs apprised of the status of these efforts. Am. Ill. Br. at 69; Tr. 1629-30 (Walters); Tr. 1699 (Willard) (affirming that there "[a]bsolutely" is dialogue with Ameritech Illinois on the issue).

3. The Commission's final review of line loss performance – as with performance of other ordering functions – should come in Phase II. Am. Ill. Br. at 63, 70; Staff Br. at 124-125; AT&T Br. at 71.

Given the extensive effort Ameritech Illinois and its affiliates have made to investigate the ordering process, to correct any problems identified, and to communicate the status and findings to interested parties, Ameritech Illinois does not understand how Staff can make the offhand assertion that "there seems to be a general lack of recognition by AI representatives of the significance of the LLN problems and that it must be corrected." Staff Br. at 130. Ameritech Illinois created (and maintains to this day) a cross-functional team devoted solely to LLN issues; performed an "end to end" analysis of the entire ordering process over several months; implemented several enhancements to electronic systems and several revisions to human processes; compiles and reviews daily reports summarizing LLN activity; located and "re-flowed" LLNs affected by past problems; submitted detailed progress reports; held a two-day workshop for all interested parties to discuss LLN issues; and maintains open lines of communication for CLECs to present new information. Am. Ill. Br. at 65-69.[25]

[25] Staff's assertion that Ameritech Illinois has exhibited a "lack of recognition" on LLN issues is founded on its view that Ameritech Illinois should have discussed the line loss issue earlier in this proceeding. Staff Br. at 130. AT&T takes a similar position. AT&T Br. at 74. Staff and AT&T, however, recognize that line loss notices are ultimately a Phase II issue, so there is no real basis for their suggestion that line loss issues should have been raised even earlier in Phase I. Moreover, Ameritech Illinois and its affiliates were certainly not hiding or ignoring the issue. Ameritech Illinois' investigation began in the fourth quarter of 2001, and it was still underway at the time of Ameritech Illinois' initial filing in November 2001. In late December

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Over and above its efforts of the past few months, Ameritech Illinois' active monitoring continues. As Mr. Cottrell explained at the hearing, Ameritech Illinois' data following the final systems enhancement of June 2002 show that 99 percent of LLNs are being issued within 24 hours of the completion of work on the related orders; nevertheless, Ameritech Illinois is keeping the cross-functional team in place as a precaution, until the various state commissions have a chance to review the data. Am. Ill. Br. at 69. There's just no pleasing Staff on this issue, though, as Staff portrays even that sensible precaution as an admission of continued problems. In Staff's view (at 131), "[a]nother indication that the LLN problems are not resolved is the fact that AI's cross-functional team is still in operation." That interpretation is absurd on its face. Had Ameritech Illinois disbanded the cross-functional teams, we have no doubt that Staff (not to mention the CLECs) would have accused Ameritech Illinois of acting unilaterally and prematurely. See Staff Br. at 131. The Commission should not punish prudence.

While we do not wish to diminish the importance of LLNs, at the same time it is important that the LLN issue not be overstated. Although there have been problems with LLNs in the past, they did not affect *all* LLNs, and they did not affect the other steps in the ordering and provisioning process (the provision of service to the end user, and the issuance of notices to the "winning" carrier). And while the parties either take no position on, or actively dispute, Ameritech Illinois' testimony that the issue has been fully resolved, no one disputes that the problem has been reduced. Thus, Staff's assertion (at 130) that "potentially" 83 CLECs are

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2001, Ameritech Michigan filed its first report on line loss issues, so the CLEC community was well aware of the status of Ameritech Illinois' efforts. Frequent updates have occurred since then, and the pertinent information has been included in this record.

affected by LLN problems – an assertion that is based on a raw count of the number of CLECs using the order interface, rather than any evidence of real impact – simply illustrates why the Commission should wait for Phase II to come to any final conclusions on this issue.

Many of the other comments on LLNs are similarly out of time. Z-Tel tries (at 6-7 & Tabs A, B and E) to submit new evidence, without so much as a by-your-leave, to support its view that Ameritech Illinois has not solved the line loss issue. Z-Tel's submission bears the unique distinction of being both tardy (because it comes after the close of the Phase I record) and premature (because it comes before the opening of the Phase II record). Moreover, Z-Tel's "evidence" does not prove its point. Even at face value, it merely shows that some Z-Tel customers are complaining about double billing (*i.e.*, being billed by Z-Tel and a competitor). Billing complaints do not reflect current performance but past performance. As Z-Tel's own Mr. Walters acknowledged at the hearing, there is a time lag between the line loss and the related bill, and another time lag between the end user's receipt of a bill and its complaint to Z-Tel. Tr. 1639 (Walters). A complaint that is received today may relate to a bill sent some time ago, and that bill may in turn relate to a line loss some time before that. Thus, Staff acknowledges that "due to the time lag in billing customers and receiving complaints, [customer complaints] may not account for the June 3, 2002 correction that AI implemented." Staff Br. at 129. Further, Z-Tel is simply assuming (i) that the complaints are valid (the end user may be complaining in error about valid bills for services rendered at different times), and (ii) that Ameritech Illinois – rather than Z-Tel or its competitor – is at fault.

Staff and AT&T, meanwhile, are not trying to submit evidence but to prematurely establish rules for future evidence. Both state that the Commission should require Ameritech Illinois to demonstrate six consecutive months of satisfactory performance before the

Commission can reach a conclusion on the line loss issue. Staff Br. at 132; AT&T Br. at 98. There is no citation to any evidence to support the six-month figure. It is entirely arbitrary. The Commission should not decide how much evidence is sufficient to complete Phase II *until* Phase II, when it sees what the evidence is.

Staff's and Z-Tel's argument on the performance measure for line loss is similarly premature. See Staff Br. at 132-138; Z-Tel Br. at 10. Performance measurement issues are being addressed in a collaborative separate from this proceeding. To set the record straight, however, Ameritech Illinois does not at all agree with Staff's and Z-Tel's view that it has not complied with the Commission's order in Docket No. 02-0160. In the collaborative Ameritech Illinois proposed a performance measure that addressed that order, Staff responded, and Ameritech Illinois believes the matter will be resolved. (In particular, Ameritech Illinois agreed to Staff's 97% benchmark.) To the extent any issues remain, there is a dispute resolution procedure already in place.

b. Ordering: Single Order Processes

In its testimony, XO noted that converting a special access circuit to an individual unbundled loop requires a CLEC to submit two orders, instead of one as is used for converting special access to an Enhanced Extended Link ("EEL"), a combination of loop and transport. See XO Ex. 1.0 (Barstow Direct) at 3-4. Now, after the record has closed, XO's brief claims that the two-order process results in "increased confusion and inefficiencies" and causes competition to "suffer." XO Br. at 6. There is no record evidence to support this assertion. XO's witness testified to the *existence* of a two-order process. See XO Ex. 1.0 (Barstow Direct) at 3-4. XO's only testimony as to its *impact* was an allegation that early on it received conflicting instructions regarding the proper code for one field on the order forms. See XO Ex. 1.0 (Barstow Direct) at 5-6. But there was no evidence that the "confusion" stemmed from the two-order process (the same field appeared on both order forms, so XO's problem would have been encountered even if its "single order" process were in place) and XO did not dispute Ameritech Illinois' testimony that the issue had been resolved. Am. Ill. Ex. 1.1 (Brown Rebuttal) at 17-19. Finally, the FCC has rejected arguments like that advanced by XO and it has specifically upheld the use of a two-order process for special access conversions. Am. Ill. Br. at 74 (citing Kansas & Oklahoma 271 Order, ¶ 176).

c. Change Management Plan

In its opening brief Ameritech Illinois described its "change management plan" for implementing OSS revisions – a plan that was developed through 13 months of negotiation with CLECs – and demonstrated that it satisfies the four criteria considered by the FCC in evaluating such plans. Am. Ill. Br. at 94-96. Three of the four criteria are undisputed: The plan provides for competing carrier input in the design and continued operation of the change management process; it is memorialized in a basic document accessible to CLECs; and it provides CLECs with a separate forum for change management disputes. Id. at 94.

AT&T's challenge is to the fourth FCC criterion – the "testing environment" that is used to test OSS changes before they go into commercial "production." AT&T complains that Ameritech Illinois' joint testing environment does not precisely mirror the actual production environment. AT&T Br. at 89-91.[26] The two deviations that AT&T cites are immaterial. First,

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26 AT&T also complains (at 91-92) that Ameritech Illinois' general policy of limiting the number of test orders it will discuss each day to five has "severely restricted AT&T's ability to 'confirm and understand' Ameritech's business rules." That claim lacks merit. AT&T did not dispute Ameritech Illinois' testimony that on most days AT&T only submitted four or fewer test orders, that carriers may submit more than five orders with proper advance notice, and that on many of the days when AT&T did submit more than five orders, Ameritech Illinois reviewed all of those orders with AT&T. See Am. Ill. Br. at 96.

AT&T complains that the testing environment rejected orders when AT&T used form "860" to resubmit previously rejected orders, when such orders were accepted in actual production at the time of testing. Id. at 90. As AT&T itself notes, however, the testing environment was right: The commercial production environment at the time should not have accepted the 860 forms either, because Ameritech Illinois' business rules required form "850." Id.; Am. Ill. Ex. 4.1 (Cottrell Rebuttal) at 29. AT&T is thus laboring under a fundamental misunderstanding. The testing environment is not intended to precisely mirror the production environment *as it exists today*; rather, it is supposed to reflect the production environment that *will* exist upon implementation of the change being tested. Am. Ill. Ex. 4.1 (Cottrell Rebuttal) at 28. If the testing environment always mirrored the current environment, CLECs would never be able to test improvements. It would be illogical to make the testing environment mirror a feature of the production environment that was about to be corrected. See id. at 29.

AT&T's other complaint – that on one occasion Ameritech Illinois asked AT&T to begin populating a certain field with numbers like "01" and "02" instead of "1" and "2" – fares no better. AT&T Br. at 91 n.79. The FCC has already held that "for purposes of demonstrating compliance with the requirements of section 271" a BOC need not provide a testing environment that is *identical* to its production environment. Texas 271 Order, ¶ 138 (emphasis added). Rather, the testing environment must "adequately" mirror the production environment such that "the testing and production environments perform the same key functions" and "carriers are able to achieve production status and test new releases without substantial difficulty." Id. Picking apart the software for any minute differences between test and production is not enough. AT&T has not presented any evidence that those differences implicated any "key functions" or caused any "substantial difficulty" in testing. Nor could it: AT&T completed testing of the LSOG version 4.2 order interface earlier this year and is now using that interface to support mass entry into the residential market. Am. Ill. Br. at 96.

AT&T's other comments do not concern the change management plan itself, but the method by which that plan was carried out in the implementation of LSOG 4 (March 2001) and LSOG 5 (April 2002). See AT&T Br. at 78-84. Substantively, AT&T's allegations reflect its underlying, rigid philosophy that anything short of perfection constitutes non-compliance. As Ameritech Illinois showed in its opening brief (at 94-99), the change management plan contains numerous opportunities for CLEC input: comment periods on Ameritech Illinois proposals, technical walk-throughs, joint testing, and a dispute resolution process. AT&T complains (at 80-83) about the changes made to the LSOG 4 and LSOG 5 documentation as a result of CLEC input, but it does not say that any of the changes were inappropriate, or conversely that Ameritech Illinois refused to implement any changes proposed by the CLECs. Rather, AT&T's view (at 78-83) is that the existence of such changes means that the documentation provided by Ameritech Illinois was inadequate and that the change management plan is not working.

But AT&T has it backwards. OSS changes are not evaluated in the middle of development, because it is impossible for any party to anticipate every preference of every user (and every feature of that user's electronic systems) and develop perfect documentation that every user understands. The purpose of obtaining CLEC input during the change management process is to make changes that accommodate their preferences. The fact that such changes were made on a collaborative basis, without need for Commission intervention, demonstrates that the change management plan is working.

AT&T's complaints are also untimely. With respect to LSOG 4, AT&T did not invoke the plan's dispute resolution procedure at the time, and its current complaints were rendered obsolete when AT&T implemented LSOG version 4.2 earlier this year. <u>See</u> Am. Ill. Br. at 96. With respect to LSOG 5, AT&T *did* raise its issues, but they have already been resolved. As AT&T states in its brief, Ameritech Illinois asked the FCC for leave to delay implementation of LSOG 5, and AT&T expressed its "questions" about LSOG 5 to the FCC. AT&T Br. at 83-84. But AT&T leaves out the FCC's answer: As its own witness acknowledged on cross, the FCC granted Ameritech Illinois' request. Tr. 1689 (Willard).

5. <u>Miscellaneous UNE Issues</u>

Pursuant to the Stipulation to Eliminate Issues filed August 23, 2002, Staff and Ameritech Illinois agree that Staff's issue with respect to the bona fide request ("BFR") process has been resolved and need not be addressed by the Commission in this proceeding.

Staff also raised an issue with respect to Ameritech Illinois' policy concerning the "resale" of UNEs by CLECs. <u>See</u> Staff Br. at 103-105. In response, Ameritech Illinois stated that "it would be permissible for a CLEC to obtain UNEs as inputs to finished products that it would sell to providers that would provide this service directly to a consumer." Tr. 1389 (Alexander); Staff Br. at 105. Staff admits that this policy satisfies its concern but worries that Mr. Alexander's testimony "may not accurately represent the company's position on this issue" in light of Ameritech Illinois' Application for Rehearing in Docket No. 01-0614. Staff Br. at 106. Mr. Alexander's testimony does represent Ameritech Illinois' position. The rehearing application objected to the "standalone" resale of UNEs "as is," not to the policy that Staff finds to be 271-compliant: "that Ameritech will provide UNEs as inputs to CLEC finished products that the CLECs may sell to providers that would provide this service directly to consumers." <u>See</u> Staff Br. at 106. At any rate, the Commission has denied Ameritech Illinois' application for rehearing in Docket No. 01-0614.

C. Checklist Item 3: Poles, Ducts, Conduits, and Rights-of-Way.

No party disputes that Ameritech Illinois meets the requirements of checklist item 3 by providing "[n]ondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the [BOC] at just and reasonable rates in accordance with the requirements of section 224." 47 U.S.C. § 271(c)(2)(B)(iii). Staff agrees that Ameritech Illinois "appears to be in compliance with checklist item number 3." Staff Br. at 153.

D. Checklist Item 4: Unbundled Local Loops.

There is no real dispute as to Ameritech Illinois' offering of traditional, voice-grade loops. AT&T claims that Ameritech Illinois does not provide loops served via NGDLC (Next Generation Digital Loop Carrier), but there is no basis for this claim because Ameritech Illinois does offer such loops. See Am. Ill. Br. at 115-116 and Section II.D.1(a) infra. While XO complains about being unable to verify the charges for facilities modification on three loop orders, each one of those orders shows on its face that the charge was zero. See Section II.D.2(b) infra. Further, Ameritech Illinois has already explained why XO's criticisms of the appointment process for certain "hot cuts" of loops are unwarranted. See Am. Ill. Br. at 106-108. There is also no dispute as to the provision of stand-alone xDSL-capable loops used to provide advanced services Id. at 112-113.

The bulk of the intervenors' arguments under checklist item 4 concern "line splitting," where one CLEC provides voice service and the same or another CLEC also provides data service using the same copper loop. There is no dispute that Ameritech Illinois allows CLECs to use one loop to provide both voice and data service. Rather, the dispute concerns various ordering and provisioning issues associated with line splitting. Whereas the FCC has defined line splitting as a voluntary arrangement between CLECs (Line Sharing Reconsideration Order, ¶ 22), the CLECs propose that line splitting be turned into some kind of "line splitting via UNE-P" service offered by Ameritech Illinois. While the specifics of the CLECs' proposals are far from clear, it is clear that the CLECs are asking the Commission to impose new requirements (*e.g.*, unbundle the "low frequency portion of the loop") and drastically expand existing requirements (*e.g.*, by eviscerating the FCC's rule that the HFPL UNE need only be provided by a BOC where the BOC is currently providing voice service). See Am. Ill. Br. at 119-123. The CLECs even ask the Commission to impose requirements on third parties, by forcing third-party data providers to enter into non-voluntary line splitting arrangements and to allow voice CLECs to use their splitters without permission. See id. at 122-124. However, in a section 271 proceeding a BOC must show compliance with the FCC's "rules and orders in effect at the time the application was filed." Kansas & Oklahoma 271 Order, ¶ 18. The CLECs have not seriously disputed that Ameritech Illinois is in compliance with the FCC's current line splitting rules, and we confirm that compliance in Section II.D.2(a) infra.

Ameritech Illinois addresses questions related to provisioning the high-frequency portion of *sub*-loops in Section II.D.2(b). Under Section II.D.2(c), Ameritech Illinois addresses the "end-to-end Broadband UNE" set forth in the Commission's order in Docket No. 00-0393, and refutes AT&T's and WorldCom's attempts to relitigate issues from that docket.

1. Nondiscriminatory Access to Stand-Alone Loops

a. Access to Fiber-Fed Loops

AT&T asks (at 112) "[w]hether Ameritech is required under the Act to provide CLECs access to unbundled loops provisioned using the NGDLC loop network." But Ameritech Illinois does provide access to loops that are served via the NGDLC architecture (Am. Ill. Br. at 115-116), so Ameritech Illinois is puzzled as to just what else AT&T is demanding here. Unfortunately, AT&T's testimony and brief are vague.[27] For this reason alone, the Commission should reject AT&T's claims. Ameritech Illinois has made its *prima facie* showing that it

[27] Although AT&T purports to address "unbundled loops," in the end it seems that AT&T may just be looking to re-litigate Docket No. 00-0393, for it alleges that "Ameritech Illinois should be required to unbundle the Project Pronto network." AT&T Br. at 122. That is, AT&T is seeking access not just to unbundled loops, but to all the piece parts of the Project Pronto architecture. The Commission declined, after a time- and resource-consuming process involving two years and two rehearings, to order the piece-part unbundling of the Project Pronto architecture in Docket No. 00-0393, and that decision should not be revisited here. See Am. Ill. Br. at 125-127; Section II.D.2(c) infra.

provides nondiscriminatory access to unbundled loops, and AT&T's inscrutable contentions should not affect checklist compliance.

b. Facilities Modification

XO raises an issue concerning notification of the activities and charges associated with the Facilities Modification process ("FMOD"), which Ameritech Illinois described in its opening brief (at 108-110). Specifically, XO claims that the description of work activity on its FMOD notices is not detailed enough for XO to determine the applicable charges. XO Br. at 3-5. In support of this claim, XO attached three FMOD forms to its testimony. See id.; XO Ex. 2.0 (Barstow Reply) Attachments B-1, B-2, B-3. But those three forms show, on their face, the applicable charges: $0.00 (on each of those forms an "X" appears in the "No Charges" field). It makes no sense to require Ameritech Illinois to provide the detail of a zero price.

c. Installation of Network Interface Devices

There is no dispute that Ameritech Illinois permits nondiscriminatory access to its network interface devices ("NIDs"), the demarcation point between the loop and the customer's inside wiring. Am. Ill. Br. at 106. Staff's sole contention is that Ameritech Illinois does not comply with a state law that mandates NID deployment. This argument has nothing to do with checklist compliance, and we address it under the "public interest" test (Section III.C.3 infra).

2. Nondiscriminatory Access to xDSL-Capable Loops Used for Advanced Services

a. Line Splitting

There is no dispute regarding standalone xDSL-capable loops or line sharing, where Ameritech Illinois provides voice service to an end user and a data CLEC provides data service to that end user using the same copper loop.[28] The bulk of the advanced services issues relating to checklist item 4 concern line "splitting," where a *CLEC* provides voice service and it (or another LEC) provides data on the same loop using a CLEC-owned splitter; in this situation Ameritech Illinois provides no service to the end user.

The only issue that Staff raises with respect to line splitting is the desire for a single order process (instead of a 3-order process) for converting a CLEC's UNE-P service into the UNEs necessary for line splitting. See Staff Br. at 157. Although the FCC has never required a single order process for any product, Ameritech Illinois has now deployed the single order process described by Staff (see Am. Ill. Br. at 74), and the Commission can confirm that fact in Phase II.

The remaining line splitting issues concern AT&T's and WorldCom's muddled "line splitting via UNE-P" proposals. AT&T asks "[w]hether Ameritech recognizes and provides UNE-P with line splitting as a current combination of network elements." AT&T Br. at 108. Similarly, WorldCom asks "whether Ameritech is providing access to the loop in a manner that allows line splitting via UNE-P." WorldCom Br. at 30. The answer is that Ameritech Illinois allows CLECs to engage in line splitting as required by the FCC's rules. See Am. Ill. Br. at 118-119. AT&T and WorldCom are asking for more, but just what they are asking for remains unclear. To ensure the record remains clear, and to demonstrate the flaws of AT&T's and WorldCom's "line splitting with UNE-P" arguments, we recap the various scenarios under which a CLEC may wish to establish a line splitting arrangement.

First, take the situation in which Ameritech Illinois provides voice service, and there is no data service. In this case, Ameritech Illinois has procedures in place to "migrate" to a line

[28] A "splitter" is used to separate the voice and data traffic. Am. Ill. Br. at 114.

splitting arrangement (*i.e.*, to separate the existing network elements and insert the splitter and DSLAM that are required for line splitting), and those procedures are the same as those used by Ameritech Illinois' affiliates when they received long-distance approval from the FCC in Texas, Kansas, Oklahoma, Arkansas, and Missouri. See Am. Ill. Br. at 118. Although AT&T and WorldCom base their line splitting arguments in large part on complaints about potential "service interruption," the Commission has already acknowledged that some service interruption is unavoidable, because where there is no data service, a splitter and DSLAM must be installed before the CLEC can engage in line splitting. See March 14, 2001 Order, Docket No. 00-0393, at 54 (recognizing that in this case "a temporary physical disconnection is an unavoidable fact"). The CLECs' allegations that there would be no service interruption under their proposals make no sense.

Next, consider the situation in which Ameritech Illinois is providing voice service and a data CLEC is providing data service over the same copper loop (a line sharing arrangement), and a CLEC wishes to "migrate" the voice service away from Ameritech Illinois, thus establishing a line splitting arrangement. If the splitter that was used in the line sharing arrangement is owned by the data CLEC, Ameritech Illinois has procedures in place whereby voice service can be "migrated" from Ameritech Illinois to a voice CLEC *without* interruption. See Am. Ill. Br. at 122. All the voice CLEC need do is obtain the data CLEC's permission to use its splitter; the voice CLEC provides Ameritech Illinois evidence of that permission by providing the data CLEC's Connecting Facility Assignment information. Am. Ill. Br. at 122.[29] Again, Ameritech

[29] WorldCom's complaint about the "rejection" of line splitting orders is really a cover for its attack on the need for the data CLEC's permission. See WorldCom Br. at 24-25, 30-31. Notably, WorldCom does not even mention (much less dispute) Ameritech Illinois' explanation that WorldCom's orders were rejected because WorldCom did not obtain permission to use the
(cont'd)

Illinois' line splitting procedures are identical to those approved by the FCC in Texas, Kansas, Oklahoma, Arkansas, and Missouri. See Am. Ill. Br. at 118.[30]

Next, the splitter in the preceding illustration might be owned by Ameritech Illinois. No checklist requirement applies here because Ameritech Illinois cannot be required to provide splitters under *federal* law (as both the FCC and this Commission have held). March 14, 2001 Order, Docket No. 00-0393, at 52-59; Texas 271 Order, ¶ 327. Nevertheless, the Commission has held that Ameritech Illinois must provide splitters as part of a "platform" of network elements under state law (specifically, section 13-801 of the PUA).[31] June 11, 2002 Order, Docket No. 01-0614, at 30. Ameritech Illinois has filed a tariff that complies with the Commission's Order, so even that requirement of state law has been met.

(… cont'd)

data CLEC's splitter. Am. Ill. Br. at 124. WorldCom instead uses inflammatory accusations like "Ameritech is preventing customers . . . from choosing WorldCom as their voice provider" (WorldCom Br. at 24) to distract the Commission from the facts.

30 Under the public interest analysis, Staff raises an issue regarding the situation when AADS (Ameritech Advanced Data Services) is the data carrier. See Staff Br. at 236-237. Ameritech Illinois addresses that situation in Section III.F below.

31 WorldCom mischaracterizes the Commission's Order in Docket No. 01-0614 when it states that the Commission "required line splitting over UNE-P, and the provisioning of the splitter as a UNE." WorldCom Br. at 25. On the contrary, the Commission found that section 13-801 created a brand-new "platform" that includes elements that, like the splitter, are not UNEs at all. The Commission explicitly recognized (at 30) that the splitter is *not* an *unbundled* network element. The Commission also recognized (at 30-31) that a "platform" that includes a splitter is not a *UNE-P*, because (i) the splitter is not an *unbundled* network element, and (ii) the UNE-P consists only of "an unbundled loop, switching functionality and shared transport." Thus, this Commission has already recognized that "line splitting via UNE-P" does not exist, for once a splitter is installed the UNE-P ceases to exist and a new and different "platform" of network elements is created.

b. Access to HFPL Subloops

Staff asserts (at 155) that Ameritech Illinois is not in compliance with checklist item 4 because its tariff requires a CLEC seeking access to an HFPL subloop (*i.e.*, access to the HFPL UNE at a location other than the central office) to submit a bona fide request ("BFR"). Staff alleges (at 154) that this somehow violates the "rebuttable presumption that unbundling of subloops is technically feasible." Staff is wrong. Ameritech Illinois' GIA offers to provide access to standard HFPL subloops, for which no BFR is required. See Am. Ill. Ex. 3.0 (Chapman Direct) at 9. While a BFR may be required for other forms of HFPL subloops that are not available as a standard offering (and for subloops offered under Ameritech Illinois' tariff), that requirement does not "shift[] the burden to a requesting CLEC" to prove technical feasibility. See Staff Br. at 155. The BFR (a process that has been repeatedly approved by the Commission, see Am. Ill. Br. at 99) only requires the CLEC to submit enough information so that Ameritech Illinois can determine whether the request is technically feasible to provision. If Ameritech Illinois were to deny the CLEC access to the requested subloop on the grounds of technical infeasibility, Ameritech Illinois would still bear the burden of proof.[32]

[32] A CLEC will access the subloop HFPL through its DSLAM, and can place its DSLAM in a number of locations, including inside the remote terminal, adjacent to the remote terminal, or at the serving area interface. Am. Ill. Ex. 3.0 (Deere Direct) Sch. WCD-1, ¶¶ 99, 106. Further, the configuration selected by the CLEC will impact Ameritech Illinois' voice service, for Ameritech Illinois will continue to provide voice service using the subloop. The BFR provides Ameritech Illinois the necessary information regarding what configuration the CLEC seeks to use.

c. The "End-to-end Broadband UNE" And The Commission's Order In Docket No. 00-0393

The FCC reviewed SBC/Ameritech's planned "Project Pronto" architecture in a nine-month proceeding, and issued its Project Pronto Order in 2000. Am. Ill. Br. at 126. This Commission reviewed, reheard, and reheard again Project Pronto issues in Docket No. 00-0393, and its final order is now before the federal courts. Id. at 127. The Commission should resist the CLECs' invitation to revisit those issues yet again here.

AT&T's first tack is to ignore Docket No. 00-0393 altogether by glibly requesting that "Ameritech Illinois should be required to unbundle the Project Pronto network." AT&T Br. at 122. Apparently, AT&T is hoping the Commission will forget its Docket No. 00-0393 and order unbundling of all the various piece parts of the Project Pronto DSL architecture. The FCC and this Commission have both rejected that request. This is not the place to reverse course, and AT&T provides no basis for doing so anyway. See Am. Ill. Br. at 125-127.

Next, AT&T and WorldCom contend that Ameritech Illinois failed to comply with the Commission's Order in Docket No. 00-0393, because its compliance tariff did not mimic verbatim an appendix to that order. AT&T Br. at 147-49; WorldCom Br. at 42-43. This issue is not appropriately the subject of this proceeding. It is apparent that Ameritech Illinois and the CLECs have different views as to what the Commission's Order in Docket No. 00-0393 required. Ameritech Illinois filed its compliance tariff in good faith after extensive discussions with Staff, discussions which the Company believed had addressed and resolved all interpretative compliance issues. Tr. 851-52 (Johnson). Staff is currently reviewing this tariff *again*. Tr. 1749 (Hoagg). Any new compliance issues can and should be resolved either through this review process or through a separate compliance investigation. The record in this proceeding is wholly inadequate to resolve the issues raised by AT&T and they are not appropriate to this proceeding in any event.[33]

[33] The differences between Ameritech Illinois' tariff and Appendix A to the Commission's Order in Docket No. 00-0393 reflect the fact that Appendix A was based on a Texas interconnection agreement (not a tariff), which in turn resulted from a Texas proceeding that addressed a broader range of issues than the parties raised in Docket No. 00-0393. Tr. 842, 846, 848-49, 864 (Johnson). Many of the so-called "discrepancies" cited by AT&T resulted simply from the need to convert contractual provisions to tariff provisions, to further clarify the Texas provisions, or to make them specific to Ameritech Illinois and its Illinois regulatory obligations. Tr. 839, 848-49, 850, 856-57, 862-63 (Johnson). The removal of the UNE-P provisions – to which AT&T takes particular exception – reflects the fact that the CLECs did not ask for, much less receive, the "right to provide voice service over the Project Pronto network using the UNE-Platform." AT&T Br. at 148. It is unclear what AT&T is complaining about, given that the tariff gives CLECs the options of using the "end-to-end UNE" to provide data service only, or to provide voice and data services. Further, AT&T cites to *nothing* in the text of the Commission's Order in Docket No. 00-0393 to support its claims that the "right" to provide voice service over Project Pronto was "Commission-ordered." It is well-established that the Commission may not place regulatory obligations on a utility unless such obligations are supported by substantial evidence in the record. Illinois Central Railroad Co. v. Ill. Commerce Comm., 395 Ill. 303, 313 (1946). Since there was *no* evidence in Docket No. 00-0393 on the issue of providing voice service over the Project Pronto architecture using the UNE-P, AT&T is essentially arguing that the Commission can ignore the law as long as it attaches overly broad appendices to its orders. That is not the case.

E. Checklist Item 5: Unbundled Local Transport.

Z-Tel's inflammatory rhetoric notwithstanding,[34] the tariff Ameritech Illinois filed in September of 2001 to comply with the provisions of section 13-801 of the PUA allows CLECs to use unbundled local switching with shared transport ("ULS-ST")[35] to carry intraLATA toll. Am. Ill. Ex. 1.1 (Alexander Rebuttal) at 32; Tariff Ill. C.C. No. 20, Part 19, § 21. Z-Tel fails to acknowledge this tariff, much less challenge it. Z-Tel's assertions regarding "end-to-end" shared transport (that is, shared transport with terminating switching) are similarly unwarranted. Z-Tel Br. at 15. Z-Tel does not even attempt to provide any authority to show that federal law (or checklist item 5) requires Ameritech Illinois to offer "end-to-end" shared transport. While the Commission's order in Docket No. 01-0614 imposes an obligation under state law to provide terminating switching as part of a network elements "platform," Ameritech Illinois has filed a tariff in compliance with that order.[36] Am. Ill. Brief at 130. Z-Tel ignores this compliance tariff.

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[34] Although Z-Tel suggests that the Order in Docket 01-0614 is evidence of Ameritech Illinois' "war against the shared transport UNE," the tariff that Ameritech Illinois filed in September 2001 (and which the docket was instituted to investigate) always provided for ULS-ST for intraLATA toll, so that was not the issue. Rather, the dispute centered on whether switched access charges would apply to such use, and whether a CLEC could resell the intraLATA toll portion of ULS-ST. See June 11, 2002 Order, Docket No. 01-0614, at 138-140.

[35] As a technical matter, shared transport cannot be provided separately from local switching. Thus, shared transport is provided as part of the product known as "ULS-ST."

[36] The Commission explicitly recognized that the network elements "platform" requirements it imposed in Docket No. 01-0614 were not federal requirements, but were imposed solely under state law. June 11, 2002 Order, Docket No. 01-0614, at 30 (asserting that state law had relegated the federal concept of unbundling to the "scrap heap of time").

Staff, however, has stipulated that the tariff has mooted the intraLATA toll issue. See Aug. 23, 2002 Stipulation to Eliminate Issues, ¶ 2(d).[37]

[37] Staff's issues concerning the use of ULS-ST for transiting and AIN-based custom routing (Staff Br. at 159-160) are likewise mooted by Ameritech Illinois' recent tariff filings. In compliance with the Commission's Order in Docket No. 01-0614, Ameritech Illinois filed a tariff that allows ULS-ST to be used for transiting. The AIN-based custom routing issue was litigated in Docket No. 00-0700, and Ameritech Illinois has filed a tariff that complies with the Commission's Order in that docket.

F. Checklist Item 6: Unbundled Local Switching.

Unbundled Local Switching and IntraLATA Toll. Z-Tel drops the other shoe when it repeats its allegation that Ameritech Illinois does not allow Z-Tel to use unbundled local switching with shared transport (ULS-ST) to provide intraLATA toll. Z-Tel argued under checklist item 5 that the shared transport half of this product was deficient; here, Z-Tel challenges the "unbundled local switching" half of the offering. As Ameritech Illinois demonstrated under checklist item 5, Z-Tel's allegation is wrong (because Ameritech Illinois' tariff expressly allows Z-Tel to use ULS-ST for intraLATA toll) and irrelevant to checklist compliance (because Z-Tel's position is based solely on the Commission's order in Docket No. 01-0614, which explicitly addressed state law rather than federal law).

Secure Switch Features. As demonstrated in its opening brief (at 131-133), Ameritech Illinois provides CLECs nondiscriminatory access to secure switch features through the BFR process. Staff agrees that the BFR process is appropriate. Staff Br. at 164; Aug. 23, 2002 Stipulation to Eliminate Issues, ¶ 4.

Rates for Unbundled Local Switching. The Commission issued an order (which Staff calls the "TELRIC 2000 Order") in Docket No. 00-0700 on July 14, 2002. In that order, the Commission held that Ameritech Illinois' current cost studies do not support a usage-sensitive component to the ULS rate, and that the rate should be "flat." July 14, 2002 Order, Docket No. 00-0700, at 4-6. Ameritech Illinois duly filed its compliance tariff on August 23, 2002 – within the time prescribed by the order. Staff argues that Ameritech Illinois' unbundled local switching rates do not comply with that order. Staff Br. at 160-162. Staff is wrong.

Critical to the Commission's decision here is understanding what Staff means by "non-compliance." Staff does not allege that there was or is any "non-compliance" now, *after* the date of the Order in Docket No. 00-0700. It does not contend that there were any substantive deficiencies in the compliance tariff, and it does not contend that the tariff was untimely. The Order specifically gave Ameritech Illinois 45 days to file a compliance tariff, and that tariff was indisputably filed on time. Thus, Ameritech Illinois has been – and remains in – full compliance with Commission orders concerning TELRIC pricing of ULS.

Nor is Staff complaining about the rates Ameritech Illinois charged *before* the Order in Docket No. 00-0700. The Commission's previous order in the TELRIC proceeding (96-0486/96-0569) directed Ameritech Illinois to charge a flat rate ($5.01) for ULS, and Ameritech Illinois did so. Staff's only complaint is that Ameritech Illinois *proposed* a new ULS rate that included a usage-sensitive component in Docket No. 00-0700. See Staff Br. at 161 (quoting Commission's Order: "The Commission rejects Ameritech's *proposed* ULS rate structure."). Thus, Ameritech Illinois did not charge usage-based rates for ULS either before or after the Order in Docket No. 00-0700. Exercising one's right to be heard, and asking the Commission to consider a proposal, do not constitute non-compliance by any stretch.

Customized Routing. It is uncontested that Ameritech Illinois offers two versions of custom routing that CLECs like WorldCom can use to route UNE-P calls to their own operator services and directory assistance platform. Am. Ill. Br. at 135-136. Ameritech Illinois further demonstrated (and WorldCom has not contested) that WorldCom has yet to make a Bona Fide Request for its desired *new* version of custom routing for Feature Group D, or to compensate Ameritech Illinois for the cost of development as required by the FCC. Id. at 136. WorldCom argues that it has "instructed" Ameritech Illinois to develop that version of custom routing. WorldCom Br. at 32. It is insufficient, however, to merely "instruct" Ameritech Illinois to develop a specialized service that – by all indications – will be used only by WorldCom. The development of such a specialized routing capability would be an expensive undertaking and the

FCC has ruled that incumbents need not follow a CLEC's "instructions" without compensation. Second Louisiana 271 Order, ¶ 221. Bluntly put, WorldCom wants something for nothing. It wants Ameritech Illinois to develop and test an application without any advance payment and without any promise on WorldCom's part that it will purchase the capability so that Ameritech Illinois can recover these costs. Not only is this position contrary to the Second Louisiana 271 Order, it is commercially unreasonable on its face.

WorldCom's second argument is equally deficient. WorldCom contends that its proposal for custom routing over Feature Group D is technically feasible. WorldCom Br. at 33. By WorldCom's own admission, however, custom routing over Feature Group D is not technically feasible in the Nortel switch (WorldCom Ex. 5.1 (Caputo Rebuttal) at 16), which accounts for 45% of all Ameritech Illinois switches. See Am. Ill. Br. at 136. That leaves WorldCom to claim that Nortel *could* develop this capability in the future. See WorldCom Ex. 5.1 (Caputo Rebuttal) at 8. Unless and until Nortel does so, however, custom routing over Feature Group D remains technically infeasible in almost half of Ameritech Illinois' switches. If a proposal is deemed technically feasible today, based on the mere possibility that it might be feasible tomorrow, the concept of technical feasibility would be meaningless.

WorldCom's witness claimed that it has conducted successful laboratory tests of custom routing over Feature Group D (WorldCom Ex. 5.0 (Caputo Direct) at 8) but then contradicted that assertion when he admitted that there are technical problems in the Nortel switch (WorldCom Ex. 5.1 (Caputo Rebuttal) at 16). In any event, technical feasibility cannot be determined by WorldCom's say-so. SBC offered to put those assertions to the test under live, real-world conditions in California, but WorldCom refused to pay the costs of the developing and deploying that capability. Am. Ill. Ex. 5.2 (Deere Surrebuttal) at 16-20. As a result, Staff agrees with Ameritech Illinois on this issue. Staff Ex. 17.0 (Light Rebuttal) at 5-6.

G. Checklist Item 7: Nondiscriminatory Access to 911, E911, Directory Assistance, and Operator Call Completion Services.

As Ameritech Illinois demonstrated in its opening brief (at 138-147), Ameritech Illinois provides nondiscriminatory access to 911, E911, Directory Assistance, and Operator Call Completion Services. With the exception of a single pricing issue, Staff agrees that Ameritech Illinois has met its burden to demonstrate compliance with checklist item 7.[38] See Staff Br. at 166-167; Staff Ex. 17.0 (Light Rebuttal) at 5-6. The only CLEC to contest this item is WorldCom (which addressed only OS and DA), and as shown in Ameritech Illinois' opening brief (at 143-147) and confirmed below, the issues raised by WorldCom are without merit.

1. 911 and E911

There is no dispute that Ameritech Illinois satisfies checklist item 7(I) by providing nondiscriminatory access to 911 and Enhanced 911 ("E911") Services. See 47 U.S.C. § 271(c)(2)(B)(vii)(I).

2. Directory Assistance/Operator Services

Ameritech Illinois has also demonstrated that it provides CLECs with "nondiscriminatory access to . . . (II) directory assistance services to allow the other carrier's customers to obtain telephone numbers; and (III) operator call completion services." See 47 U.S.C. § 271(c)(2)(B)(vii). The only issue raised in the parties' briefs is WorldCom's contention that Ameritech Illinois must offer OS and DA at TELRIC-based rates because Ameritech Illinois has not provided WorldCom with its preferred form of customized routing. WorldCom Br. at 34-35. As explained under checklist item 6, WorldCom's contention concerning customized routing is

[38] Staff's testimony raised a single pricing issue, related to pricing for AIN-based custom routing. That issue was resolved by the Commission's July 10, 2002 Order in Docket No. 00-0700. See Section II.E supra.

without merit. And in any event, Ameritech Illinois *does* offer OS and DA at TELRIC-based rates, in accordance with the Commission's TELRIC Compliance Order. Am. Ill. Ex. 9.0 (Nations Direct) Sch. 1, ¶¶ 4, 18; Am. Ill. Ex. 9.1 (Nations Rebuttal) at 10.

3. Directory Assistance Listings and Direct Access to DA Database

Pricing for DA Listings. As explained in Ameritech Illinois' initial brief (at 145-146), Ameritech Illinois is not obligated to provide bulk DA listings at TELRIC-based rates. WorldCom has provided no legal authority for its assertion that DA listings updates are a UNE; to the contrary, WorldCom simply ignores the FCC's UNE Remand Order (¶ 444), which expressly excluded DA listings from the unbundling requirements, and thus from the TELRIC regime. See Am. Ill. Br. at 144-145. Thus, conceding that it has no legal authority to support its claim, WorldCom resorts to claiming that the unbundling rules are irrelevant because "federal law requires 'just' 'reasonable' and 'non-discriminatory' pricing for DA and DAL *regardless of* whether or not directory assistance is required to be unbundled pursuant to Sections 251(c) and (d)." WorldCom Br. at 37 (emphasis added). However, if only TELRIC-based rates were "just," "reasonable," and "non-discriminatory," there would be little need for the 1996 Act to differentiate between those network elements that must be "unbundled" (and thus offered at TELRIC-based rates) and those that do not fall under the unbundling requirements.[39]

[39] Further, the FCC would not have held, as it did in the UNE Remand Order (¶ 473), that market-based rates apply to those elements that are not required to be unbundled: "In circumstances where a checklist network element is no longer unbundled, we have determined that a competitor is not impaired in its ability to offer services without access to that element. . . . Under these circumstances, it would be counterproductive to mandate that the incumbent offers the element at forward-looking prices. Rather, the market price should prevail, as opposed to a regulated rate which, at best, is designed to reflect the pricing of a competitive market."

The TELRIC methodology was not developed to implement the requirements of "nondiscrimination" or "just and reasonable" rates, terms and conditions for all the wholesale products and services that appear throughout the 1996 Act. Rather, TELRIC was developed solely to implement the specific language of section 252(d)(1) of the 1996 Act, which requires that rates for interconnection and certain network elements be "based on the *cost* (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element." 47 U.S.C. § 252(d)(1) (emphasis added); see First Report and Order, ¶¶ 618-620. Under Section 252(d)(1), cost-based rates apply only to the rates for interconnection under section 251(c)(2) and for unbundled network elements under section 251(c)(3). Sections 251(c)(2) and 251(c)(3) mirror that language, as they are the only provisions that require rates to be set in accordance with the requirements of section 252. By its plain terms, section 252(d)(1) does not apply to the requirements established in section 251(b), such as the requirement to provide DA listings downloads; likewise section 251(b) does not refer to the pricing requirements of section 252.

Finally, contrary to WorldCom's claims (at 37), the DA listings rate is on its face "just and reasonable." WorldCom buys DAL from Ameritech Illinois at about 3.3 cents per listing, but WorldCom then sells its DA Service in some instances as high as $2.49. See Tr. 960-961 (Caputo); Am. Ill. Ex. 9.2 (Nations Surrebuttal) at 8.

H. Checklist Item 8: White Pages Directory Listings.

Ameritech Illinois has satisfied the requirements of checklist item 8. There is no dispute that CLEC subscribers' listings are integrated into the White Pages just like Ameritech Illinois' end user listings, and CLEC subscribers receive the same White Pages in the same way that Ameritech Illinois' end users do. Am. Ill. Br. at 148-151. Staff agrees that Ameritech Illinois "appears to be in compliance with the white pages directory listing requirements of Checklist Item 8." Staff Br. at 170. The few disputes related to this checklist item relate solely to procedures for submitting or obtaining listings, and they do not affect checklist compliance.

1. Single Interface for Directory Listing Orders and Pre-Ordering Inquiries

As explained in Ameritech Illinois' initial brief (at 152-153), CLECs can submit a directory listing order at the same time and through the same interface that they request local service. AT&T's charge that a "second interface" is required concerns only the indisputably small percentage of orders for which AT&T receives a faxed error notice from AAS (the Ameritech Illinois affiliate that integrates and publishes white pages listings) after the initial submission and edit of a request. See id. at 154. As for AT&T's claim regarding pre-order inquiries, AT&T has not shown that the use of an AAS interface (as opposed to the Ameritech Illinois interface used by resale and UNE-P CLECs) for pre-ordering has any competitive significance. Nor does AT&T dispute that this difference stems solely from the fact that switch-based CLECs do not order any product from Ameritech Illinois that includes a directory listing, so that CLECs' listing information does not reside in Ameritech Illinois' customer service records. See Am. Ill. Br. at 155.

2. ACES Interface and TCListLink

As Ameritech Illinois demonstrated in its initial brief (at 154-158), XO's complaints concerning White Pages listings have either been addressed or are groundless. As Staff agrees, Ameritech Illinois' testimony "addresses each example [of problems] provided by XO, and cites the steps and actions taken by [Ameritech Illinois] to remedy the problem." Staff Br. at 169. Further, "a significant portion of the problems experienced by XO were caused by XO's internal processes." Id.

Given this showing, it is not surprising that XO's brief cuts its expansive testimony to just two minor points. First, XO claims (at 11) there is a "major problem" with the rejection notification process. There is not. Ameritech Illinois has acknowledged that it did not provide rejection notices after XO submitted duplicate listings. Am. Ill. Ex. 8.0 (Kniffen-Rusu Rebuttal) at 4. This problem was fixed months ago. AAS has retrained the personnel responsible for the rejection notice process and has implemented a periodic audit process to avoid any repeat of the problem. Id. Rejection notices are and have been flowing to XO on a regular basis. Am. Ill. Ex. 8.2 (Kniffen-Rusu Surrebuttal) at 3-4.

XO's attempt to discredit the accuracy of the TCListLink database is a stretch of equal proportion. In the end, XO only complains of a single incident in which some of its customer information "fell-out" of the TCListLink database. XO Br. at 12. The record shows that XO itself caused those names to be removed from the database. Am. Ill. Ex. 8.2 (Kniffen-Rusu Surrebuttal) at 12-13. One XO employee issued *manual orders* to supplement the listings in the database, while at the same time, a second XO employee instructed AAS to *delete the entire listing* for that end user so that XO could resubmit the order on a clean slate. Id. AAS ultimately identified the conflicting information from XO and assisted XO in coordinating its orders so that XO was able to establish the directory listings to its satisfaction. Id. Clearly, Ameritech Illinois is not to blame for XO's inaccurate submissions. See New York 271 Order, ¶ 176 n.558 (rejecting CLEC claims where there was "no evidence in the record that shows, or even indicates, that Bell Atlantic's systems and interfaces, and not the competing carriers', are responsible for the failure of competing carriers to receive order confirmations").

In connection with this issue, XO attempts to supplement the record by alleging new facts in its brief that are not in any testimony. XO Br. at 12. The extra-record allegation is that Ameritech Illinois instructed XO to issue at least one of the conflicting orders. Ameritech Illinois disputes XO's allegation, but in any event, XO's "evidence" is not in the record, has not been subject to cross-examination, and should be disregarded.

I. Checklist Item 9: Nondiscriminatory Access to Telephone Numbers.

Checklist item 9 requires a BOC to demonstrate:

> Until the date by which telecommunications numbering administration guidelines, plan, or rules are established, nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers. After that date, compliance with such guidelines, plan, or rules.

There is no dispute that Ameritech Illinois has satisfied checklist item 9. See Staff Br. at 171-172 (stating that "it appears that Ameritech complies with the numbering administration requirements of Checklist Item 9"); Am. Ill. Br. at 160-161.

J. Checklist Item 10: Nondiscriminatory Access to Databases and Associated Signaling Necessary for Call Routing and Completion.

Checklist item 10 requires a BOC to provide "[n]ondiscriminatory access to databases and associated signaling necessary for call routing and completion" (47 U.S.C. § 271(c)(2)(B)(x)) – specifically, to the signaling network that transmits data within the network, certain call-related databases necessary for call routing and completion, and the Service Management Systems (SMS) used to maintain the data. No party disputes that Ameritech Illinois provides nondiscriminatory access to its signaling networks (Am. Ill. Br. at 162) and to its Service Management Systems (id. at 170-171). There is also no dispute as to four of the six call-related databases identified by the FCC (47 C.F.R. § 51.319(e)(2)(i)): the Toll Free Calling Database ("800 Database"), the Advanced Intelligent Network Database ("AIN"),[40] the 911 Database, and the E911 Database. See Am. Ill. Br. at 138, 163-164. The only disputes under this checklist item relate to the Calling Name Database ("CNAM") and the Line Information Database ("LIDB").[41]

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[40] While XO's testimony raised an issue concerning access to Privacy Manager (a proprietary service that uses the AIN database), it did not raise this claim in its brief. As Staff noted in its brief (at 178), "neither the FCC or the state require an ILEC to unbundle Privacy Manager."

[41] In an attempt to persuade the Commission that DA listings are a UNE, WorldCom transplants its DA listings claims from checklist item 8 to checklist item 10. Checklist item 10, however, addresses access to "call-related databases," and the DA database is not a "call-related database." Am. Ill. Ex. 9.2 (Nations Surrebuttal) at 8-9. As WorldCom itself notes (at 35), the FCC has defined "call-related databases" as those that are "used in signaling networks"; DA listings do not meet this requirement. DA listings are not found in the FCC's list of call-related databases, and are not used in the signaling network (*i.e.*, on a switch-query basis). See Am. Ill. Br. at 144. Ameritech Illinois refutes WorldCom's claim regarding DA listings under checklist item 8.

LIDB. Ameritech Illinois is not, as WorldCom claims, "limiting WorldCom's use of the LIDB to those cases where WorldCom would use it for the provision of local service." WorldCom Br. at 39. Where WorldCom is providing long distance service, it may still access the LIDB; all it has to do is pay the applicable access charge. Am. III. Br. at 164-166. WorldCom may not access the LIDB *as a UNE* when it provides long distance service, because the FCC has held that long-distance providers cannot use unbundling to evade long-distance access charges. Id. at 165 (citing First Report and Order, ¶ 30). Moreover, this is merely a theoretical controversy with no real-world implications. The rates for LIDB access in Ameritech Illinois' access tariff is actually lower than its tariffed TELRIC-based rate. See Tr. 979-980 (Caputo).

Per-Query Access vs. Bulk Downloads of CNAM. WorldCom's contention that Ameritech Illinois must provide bulk downloads of all the information in its CNAM database (as opposed to allowing CLECs to submit "queries" for individual calls the way Ameritech Illinois does) has been demonstrated to be wrong by Ameritech Illinois. Am. Ill. Br. at 166-168. Staff likewise rejects WorldCom's argument. Staff Br. at 182-183. And the FCC has now conclusively confirmed that WorldCom is wrong. In the Verizon Virginia arbitration, WorldCom made the same arguments concerning bulk access that it makes here. The FCC expressly held that "the Act and the Commission's rules do not entitle WorldCom to download a copy of Verizon's CNAM database or otherwise obtain a copy of that database from Verizon." Verizon Virginia Arbitration, ¶ 524. The FCC noted that an ILEC need only allow access to call-related databases "[f]or purposes of switch query and database response through a signaling network" and "by means of physical access at the signaling transfer point," the way Ameritech Illinois does. Id. The FCC also expressly rejected WorldCom's arguments that bulk downloads are required for "nondiscriminatory access." Id. ¶¶ 525-527. WorldCom's citations to decisions by a few other state commissions, which predate the Verizon Virginia Arbitration and are outnumbered by the weight of state commission decisions going the other way (Am. Ill. Ex. 5.1 (Deere Rebuttal) at 39-42), are thus obsolete.

Access to Other Carriers' CNAM Databases. While RCN makes much of the fact that Ameritech Illinois has in six instances corrected individual routing errors that affected CNAM queries (RCN Br. at 27), these are, as Staff notes, the kind of problems that are appropriately resolved on a case-by-case basis.[42] See Staff Br. at 174-175. Further, RCN presented no testimony to dispute Ameritech Illinois' explanation of the causes of differences in CNAM information that RCN and Ameritech Illinois customers sometimes receive. See Am. Ill. Br. at 169-170.

In any event, RCN's complaints are based on a misunderstanding of the relevant legal requirement. RCN asserts that Ameritech Illinois must provide access to its CNAM database "so that the information CLEC customers receive is the same as the information that Ameritech's customers receive." RCN Br. at 37. Nowhere does RCN provide any legal authority for this claim – because there is none. The relevant standard, as Staff notes (at 173), is whether Ameritech Illinois provides RCN with "nondiscriminatory access." Parity in access does not mean parity in the end result, because different carriers may use different technologies to read the data and provide their Caller ID services. Am. Ill. Br. at 169-170. As Staff notes, Ameritech

[42] RCN may be correct in claiming (at 27 n.81) that it "would be extremely difficult and unreasonable for RCN to have to submit tens of thousands of . . . individual requests" to correct individual routing problems. However, RCN has presented *no* evidence, and has not even claimed, that there actually exist tens of thousands, or any other number over six, of routing errors.

Illinois "has met its burden of proof in demonstrating that CLECs can access CNAM databases in a manner that is at parity with the way in which [Ameritech Illinois] accesses the databases." Staff Br. at 175-176.

While Staff believes that "it is unclear at this time what is causing the problem RCN is experiencing," Staff does note that Ameritech Illinois "has met its burden by identifying a number of non-[Ameritech Illinois] related causes." Staff Br. at 175. As Staff has requested, Ameritech Illinois continues "to work with RCN in a coordinated effort to resolve the problem raise by Mr. Dedhiya, in an expeditious manner as possible" (id. at 176). It must remain clear, however, that Ameritech Illinois is not to be held responsible for problems it did not cause, or to fix software that RCN purchased from an outside vendor or any source other than Ameritech Illinois.

K. Checklist Item 11: Number Portability.

There is no dispute that Ameritech Illinois satisfies checklist item 11 and that it provides long-term number portability in accordance with FCC rules. Am. Ill. Br. at 172-173. Staff agrees that "it appears to Staff that Ameritech complies with the number portability requirements of Checklist Item 11." Staff Br. at 184.

L. Checklist Item 12: Local Dialing Parity.

There is no dispute that Ameritech Illinois satisfies checklist item 12 by providing "[n]ondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3)." 47 U.S.C. § 271(c)(2)(B)(xii); Am. Ill. Br. at 174. Staff agrees that "it appears to Staff that Ameritech's operations satisfy the requirements for Checklist Item 12." Staff Br. at 186.

M. Checklist Item 13: Reciprocal Compensation.

As with several other checklist items, the intervenor comments on reciprocal compensation are sadly lacking in perspective. No one even discusses, much less disputes, the issue that matters: Ameritech Illinois has entered into numerous legally binding reciprocal compensation arrangements, and those arrangements satisfy "the requirements of section 252(d)(2)." 47 U.S.C. § 271(c)(2)(B)(xiv).[43]

The only real dispute concerns a subject that does not matter for purposes of the checklist, and is not even ripe for adjudication: the terms that Ameritech Illinois offers for *future* reciprocal compensation arrangements to implement the FCC's 2001 ISP Compensation Order. Specifically, Staff and AT&T oppose (i) Ameritech Illinois' offer of bifurcated rates – a straightforward proposition in which the up-front costs of setting up a call are charged up front, while costs incurred throughout the duration of the call are charged throughout the duration of the call; (ii) the fact that Ameritech Illinois does not affirmatively offer to let CLECs "opt in" to other CLECs' reciprocal compensation arrangements (based on the ISP Compensation Order's express termination of such "opt ins"); and (iii) the fact that Ameritech Illinois has not yet affirmatively elected the optional "caps" on reciprocal compensation rates that appear in the ISP Compensation Order, but instead offers to give 20 days' notice if it makes that election in the future. Staff Br. at 41-49, 193-212; AT&T Br. at 48-50, 141-143.

Notably, although the comments on this item include the habitual refrain that Ameritech Illinois' offers constitute a barrier to entry (see Staff Br. at 46-47, 52-53), they do not actually

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43 Staff professes confusion over which agreement specifically contains the tariffed rates for reciprocal compensation. Although several agreements contain the tariffed rates, the more important point is that they are tariffed rates, and are therefore legally binding and available to CLECs.

come from a CLEC seeking to enter. Rather, they are catcalls from the balconies, raised either by Staff or by AT&T, which already has reciprocal compensation arrangements that it appears perfectly happy to keep. Ameritech Illinois demonstrated in its opening brief, and confirms below, that the Staff and AT&T arguments are wrong. But there are three reasons why the Commission need not address them at all.

First, this Commission has held that disputes related to compensation for ISP-bound traffic fall outside its jurisdiction and within the exclusive purview of the FCC. July 24, 2002 Order, Docket No. 01-0427, at 8. Second, the FCC has in turn held that compensation for ISP-bound traffic is irrelevant to checklist item 13, because the 1996 Act's provision on reciprocal compensation, section 251(b)(5), does not apply to such traffic in the first place. <u>Georgia & Louisiana 271 Order</u>, ¶ 272. More generally, the FCC has also declined to use section 271 proceedings to resolve interpretive disputes, particularly with respect to matters that are the subject of a pending rulemaking devoted to the issue. <u>Arkansas & Missouri 271 Order</u>, ¶ 82.

In an effort to surmount these bars, Staff goes to great pains to explain that the disputed provisions of the <u>ISP Compensation Order</u> might also affect compensation for traffic other than ISP-bound traffic. But to date they have not. Although the <u>ISP Compensation Order</u> (¶ 8) allows incumbents to elect "caps" on reciprocal compensation rates, Ameritech Illinois has not yet made the election, so it remains subject to the "state-approved or state-negotiated rates reflected in [its] contracts" and that is where the Commission must assess compliance. Likewise, although there seems to be no dispute that the FCC's order prevents entering carriers from opting into other carriers' existing arrangements in at least some cases (the only dispute is whether there are any existing arrangements that can be opted into), that does not affect existing arrangements, nor does it affect the substantive compliance of any arrangement: all it addresses is the procedure by which future arrangements are to be made. Most importantly, although the FCC's order kicked off a rulemaking that could extend to reciprocal compensation for *non*-ISP traffic, the pendency of that rulemaking argues against, not for, the consideration of new compensation rules here and now. That is why Staff sought – and the Commission ordered – dismissal of a generic proceeding on reciprocal compensation (which covered all traffic, not just ISP-bound traffic) shortly after the ISP Compensation Order. July 25, 2001 Order, Docket No. 00-0555, at 2-3.

But in any event, to the extent any CLEC wants to enter a reciprocal compensation arrangement and disagrees with Ameritech Illinois' offer, it can do what parties do in any other such disagreement – negotiate or seek arbitration – and the Commission can resolve that disagreement then.[44] The Commission has not had to decide a single such dispute yet, even though the ISP Compensation Order has been around for over a year. To the contrary, several carriers have *accepted* Ameritech Illinois' offer and the Commission has approved the resulting agreements. Am. Ill. Ex. 1.1 (Alexander Rebuttal) at 43. There simply is no basis for the contention that Ameritech Illinois' offer represents a barrier to entry, and no need for the Commission to address these issues in the abstract now.

Bifurcated Rate Offer. AT&T charges that Ameritech Illinois' mere *offer* of a bifurcated rate structure constitutes discrimination against CLECs that serve ISPs (AT&T Br. at 142-143) while Staff contends that "Ameritech has imposed its own self-serving reciprocal compensation rate structure on CLECs" (Staff Br. at 211). The first and dispositive rebuttal is that the

[44] Pending negotiation or arbitration, the CLEC can enter into an interim arrangement to receive compensation immediately. The amount of compensation would be trued up to reflect the final agreement. Am. Ill. Ex. 1.1 (Alexander Rebuttal) at 43, 47-48.

bifurcated rate offer is just that – an offer, extended to carriers that seek to negotiate new or amended agreements. Ameritech Illinois has not imposed anything on anyone. Carriers that already have agreements with unitary rates can continue under their existing arrangements. Carriers that order from tariffs will continue to receive the tariffed unitary rates. Carriers that agree to the bifurcated structure can accept Ameritech Illinois' offer and enter into a binding agreement. And carriers that want new agreements but disagree with the bifurcated structure can seek negotiations or arbitration. A barrier to entry? Hardly. Although the ISP Compensation Order has been in effect for over a year, the Commission has not had to decide a single challenge to Ameritech Illinois' bifurcated rate offer; to the contrary, several carriers (such as One Point) have accepted it and the Commission has approved the resulting agreements. Am. Ill. Ex. 1.1 (Alexander Rebuttal) at 43.

AT&T and Staff omit much of the history of the "ISP" reciprocal compensation issue, and distort the rest. First, neither party points out that the FCC has found that CLECs who target ISPs are not the victims of discrimination, as AT&T suggests (at 142-143), but the beneficiaries of a regulatory arbitrage that does not warrant the protection AT&T seeks. Second, neither party points out that the Commission has approved agreements containing the "self-serving scheme" that Staff contends has never been "submitted . . . for Commission approval." Staff Br. at 210. To respond, then, we must first set the record straight.

Consumers contract with ISPs to obtain access to the Internet. "Typically, when the customer wishes to interact with a person, content, or computer, the customer's computer calls a number provided by the ISP that is assigned to an ISP modem bank. The ISP modem answers the call (the familiar squelch of computers handshaking)." ISP Compensation Order, ¶ 58. The user then initiates a communication over the Internet by transmitting a command, for example, by requesting a webpage. Id. The request is forwarded to the distant computer that "hosts" that page (for example, the CNN.com website).

This Commission ordered Ameritech Illinois to pay reciprocal compensation to AT&T (among other CLECs) for traffic initiated by Ameritech Illinois customers and forwarded to Internet destinations by ISPs that are served by the CLECs. Am. Ill. Ex. 1.0 (Alexander Direct) Sch. SJA-1, ¶ 117. While Ameritech Illinois has sought judicial review of that decision, there is no dispute that it complies with the Commission's order. On April 27, 2001, the FCC issued its ISP Compensation Order, in which it agreed with Ameritech Illinois' position "that the [reciprocal compensation] provisions of section 251(b)(5) do not extend to ISP-bound traffic." ISP Compensation Order, ¶ 1. Indeed, the FCC found that the assessment of reciprocal compensation on such traffic was contrary not only to the text of the 1996 Act but also to its competitive purposes. In the FCC's words, such compensation represents a "classic regulatory arbitrage" (id. ¶ 21) that created a "windfall" for carriers receiving such payments (id. ¶ 70).

There are two reasons for this arbitrage. First, while reciprocal compensation was founded on the assumption "that traffic back and forth on these interconnected networks would be relatively balanced," in reality "ISP modems do not generally call anyone in the exchange." Id. ¶ 21. Thus, "traffic to ISPs flows one way" and "so does money in a reciprocal compensation regime." Id. The FCC found that such "large one-way flows of cash" have "distort[ed] the development of competitive markets" (id. ¶ 21) and encouraged carriers to compete by shifting their costs to incumbent carriers rather than on the basis of quality and efficiency. Further, the regulatory arbitrage encouraged carriers to "target ISP customers" (id. ¶ 70) at the expense of other customers (such as homeowners) and this "created incentives for inefficient entry of LECs intent on serving ISPs exclusively [rather than] offering viable local telephone competition, as Congress had intended to facilitate with the 1996 Act" (id. ¶ 21).[45]

Part 2 of the arbitrage was facilitated by the rate structure for reciprocal compensation. As Ameritech Illinois showed in its opening brief (at 179), reciprocal compensation rates are intended to cover two different types of costs: (1) the costs of setting up a call, which are not incurred on a per-minute basis but incurred only once (at the start of the call), and (2) the costs of keeping open an existing connection, which are incurred throughout the duration of the call. But most states, including Illinois, "have adopted per minute reciprocal compensation rate structures." ISP Compensation Order, ¶ 76. Because set-up costs are incurred one time per call, they were divided by the estimated average length of a call (about four minutes) to derive a flat per-minute rate. For calls of roughly that length, compensation reflects cost incurred. The per-minute rate is multiplied by four (minutes), and the result is the same as the set-up cost with which we started. But for longer calls, like those made to "surf the Web," compensation exceeds the cost incurred, because the per-minute rate is multiplied by a duration much longer than the four minutes that were divided into cost. Thus, the FCC found that "[i]t is unlikely that any minute-of-use rate that is based on average costs and depends upon demand projections will reflect the costs of any given carrier to serve any particular customer"; instead, such a structure

45 One solution to the problem of imbalanced traffic is to establish a contingent, lower rate that applies when traffic is out of balance. Ameritech Illinois and Level 3 agreed to such an arrangement and amended their interconnection agreement to reflect it. Am. Ill. Ex. 1.1 (Alexander Rebuttal) at 46. While Staff suggests that the amended agreement no longer matches the Commission-approved rates, there is no shortage of interconnection agreements that reflect the approved rates (as does the tariff), so Ameritech Illinois still meets its burden of proof. The Level 3 amendment also comports with the 1996 Act. Section 251(a) upholds voluntary agreements even if their terms differ from the Act's requirements, and the FCC specifically cited the Level 3 amendment to support the elective "caps" established by the ISP Compensation Order. See id. ¶ 85 & n.158.

"encourage[s] carriers to target customers that are, on average, less costly to serve, and reap a reciprocal compensation windfall." Id.

The FCC has undertaken a comprehensive review of reciprocal compensation. Id. ¶ 6. It is actively considering a phase-out or elimination of some or all such compensation; it has also sought comment on a bifurcated rate structure (which separates the charges for call set-up and duration) as one solution to the arbitrage issues noted above. Id. ¶ 75 n.142. But it recognized "a need for immediate action with respect to ISP-bound traffic" to eliminate such arbitrage opportunities. Id. ¶ 8. Accordingly, the ISP Compensation Order took the following actions, among others: (i) to prevent reciprocal compensation arrangements from spreading beyond existing agreements, the FCC held that "carriers may no longer invoke section 252(i) to opt into an existing interconnection agreement with regard to the rates paid for the exchange of ISP-bound traffic," (id. ¶ 82); and (ii) the FCC established a declining schedule of "caps" on reciprocal compensation rates, which an incumbent could elect so long as it offered to exchange non-ISP traffic at the same rate (id. ¶ 8). The caps, however, do not apply to agreements that predate the ISP Compensation Order unless an agreement, by its terms, says so (for example, by means of a change-in-law provision). Id. ¶ 82. Thus far, Ameritech Illinois has neither made nor refused the election (a position that is addressed below). See Am. Ill. Br. at 176-178. It does, however, offer CLECs a bifurcated rate structure in its GIA. Id. at 179-181.

AT&T itself blithely admits (at 8, 14) that CLECs have rushed to sign up ISPs, and Staff similarly observes (at 200) that "reciprocal compensation received from Ameritech constitutes a major portion of CLEC revenues in Illinois" but neither party gives the real reasons why – namely, CLECs are obtaining a steady diet of "reciprocal compensation" that is neither reciprocal (*i.e.*, most of the money goes one way, to the CLEC) nor compensatory (*i.e.*, the

CLEC receives payments that greatly exceed any actual costs). The reason for their omission is that the history and outcome of the ISP Compensation Order devastate the Staff and AT&T arguments regarding reciprocal compensation.

First, the bifurcated rate offer does not discriminate against carriers that target ISPs or other subscribers that receive a large volume of long-duration incoming calls. See AT&T Br. at 141-143. The reality is exactly the opposite. The unitary structure in current tariffs discriminates *in favor of* carriers that target ISPs, by giving them a windfall. True, a bifurcated structure might mean less money for such carriers, but that is because it takes away the existing windfall and provides for more accurate compensation.

Second, the bifurcated rate offer does not represent a substantive departure from cost or from the rates approved by this Commission. See Staff Br. at 210-211. The costs used for each rate component are the same as those approved by the Commission. The only change is that Ameritech Illinois unraveled the artificial "averaging" step used to collect one-time call set-up costs through per-minute rates. Am. Ill. Ex. 10.1 (Smith Rebuttal) at 10.

Nor is the bifurcated rate offer inconsistent with the ISP Compensation Order. See Staff Br. at 210-211. The FCC did not reject bifurcated rates, much less preclude parties from agreeing to them. In fact, it sought comment on the merits of such a structure in its pending rulemaking. ISP Compensation Order, ¶ 92. The FCC also did not order parties to implement unitary rates. In fact, it found the unitary system to be at the heart of the arbitrage problem it sought to address. The FCC merely offered a system of unitary "caps" that incumbents *could* elect if they so chose; if not, the incumbent "must exchange ISP-bound traffic at the state-approved *or state-negotiated* reciprocal compensation rates reflected in their contracts." Id. ¶ 8. Ameritech Illinois does just that, and Staff's contention that the FCC ordered Ameritech Illinois to use *only* state-*approved* rates (Staff Br. at 197-98, citing ISP Compensation Order, ¶ 89) ignores the FCC's endorsement of state-*negotiated* rates (ISP Compensation Order, ¶ 8).

Staff's brief also suffers from selective amnesia, but on a different level. Where AT&T ignores the FCC's findings, Staff ignores proceedings before this Commission. In the Ameritech Illinois/Focal arbitration, Docket No. 00-0027 (which Staff references at page 199 of its brief but does not discuss), the Commission ordered Ameritech Illinois to pay reciprocal compensation on ISP-bound traffic, but also recognized the evidence that "dramatic shifts in the utilization of the local exchange network, associated with the explosion in Internet traffic," were affecting the issue of reciprocal compensation. May 8, 2000 Arbitration Decision, Docket No. 00-0027, at 12. The Commission accordingly directed Staff to initiate a generic proceeding "to further address the issue of reciprocal compensation." Id. That proceeding, Docket No. 00-0555, was to "consider[] alternatives to the current reciprocal compensation rate structure" on the ground that "[c]urrent reciprocal compensation rates are based on traditional voice call holding times," which may be shorter, on average, than for "dial-up Internet traffic routed to an ISP." Aug. 7, 2000 Initiating Order, Docket No. 00-0555, at 1. Staff acknowledged that "[a] bifurcated rate structure is one solution the Commission may wish to explore" to the problem posed by the Commission's initiating order. March 19, 2001 Staff Resp. to Hearing Examiner's Directive, Docket No. 00-0555, at 6 (administrative notice requested).

As it turned out, Staff did not take a position on the merits of any particular proposal, and the Commission did not rule on the merits. Why not? While Docket No. 00-0555 was in progress, the FCC issued its ISP Compensation Order and announced its own comprehensive rulemaking on reciprocal compensation. As a result, Staff successfully moved to dismiss Docket No. 00-0555 on the ground that the FCC had pre-empted the Commission's initiative. In Staff's words, "[t]here is only one action the Commission should take: dismiss this proceeding." Staff's June 25, 2001 Motion to Dismiss, Docket No. 00-0555, at 5. The Commission agreed, and it recently reaffirmed that principle when it declined to resolve a dispute between Essex Telecom and Gallatin River Communications regarding compensation for ISP-bound traffic. July 24, 2002 Order, Docket No. 01-0427, at 8 ("[T]he FCC has effectively taken ISP bound calls without state authority . . . . [T]he Commission concludes that it is without authority to determine disputes over compensation for ISP bound calls.").

Staff's position here is that the Commission should put section 271 on hold, reclaim jurisdiction over rate structure issues and open a new generic proceeding while the FCC rulemaking is still in progress. See Staff Br. at 192. It is unclear what result Staff seeks from such a proceeding. On the one hand, Staff seems to oppose the bifurcated rate proposal (id. at 210); on the other hand, Staff suggests that the Commission might do away with the current unitary structure (id. at 192). Either way, Staff's call for a new generic ratemaking flies in the face of Staff's earlier position – and the Commission order adopting that position – that such issues belong to the FCC. Moreover, Staff's position on the merits (that a bifurcated rate structure is a "self-serving scheme") is contrary to the Commission's order approving such an agreement between Ameritech Illinois and One Point. It is also incorrect for Staff to contend, as it does at page 210 of its brief, that "Ameritech has not submitted its new reciprocal compensation scheme for Commission approval [because] it simply cannot stand up to scrutiny." Clearly, Ameritech Illinois has made no secret of its offer.

Opt-in Exemption. Ameritech Illinois' opening brief (at 178-179) demonstrated that it need not permit CLECs to "opt in" to terms and provisions for reciprocal compensation in existing interconnection agreements, because the FCC has held that the Act's "opt in" provisions do not apply to terms and conditions related to compensation for ISP-bound traffic. ISP Compensation Order, ¶¶ 2, 82. Plainly, there is *some* limit on opt-in rights; the only question is its scope. AT&T (at 49-50) posits a hypothetical, in which Ameritech Illinois would oppose a carrier's attempt to opt into an agreement even if it was negotiated after the ISP Compensation Order. But that just shows the issue is not ripe. If and when a CLEC really wants to opt into the reciprocal compensation provision of a specific agreement (as opposed to the hypotheticals AT&T propounded at the hearing), it can negotiate that request with Ameritech Illinois; and, if the parties do not reach agreement the CLEC can raise the matter before the Commission. The Commission can then resolve the matter based on facts rather than hypotheses.

Rate Cap Election. The same understanding of history that defeats the opposition to the bifurcated rate offer also refutes the AT&T and Staff position that Ameritech Illinois does not comply with the checklist because it has not yet adopted or rejected the elective rate caps set forth in the ISP Compensation Order. AT&T Br. at 141-143; Staff Br. at 193-203. The Commission should first reject out of hand AT&T's insinuation (at 143) that the rate caps are "the FCC's rates" and that Ameritech Illinois has disobeyed the FCC's order by not adopting them. As Staff itself acknowledges, the rate caps are elective, not mandatory: "[T]he FCC did not mandate the use of its revised intercarrier compensation scheme. Rather, it provided ILECs a choice of whether to elect the plan or not." Staff Br. at 197.

Staff, however, errs in its view that the election has expired and that Ameritech Illinois violates the "intent and letter" of the ISP Compensation Order simply by *offering* language that would allow Ameritech Illinois to elect the caps in the future on 20 days' notice. Staff Br. at 175. By Staff's own admission, its position has no support in the Order itself – Staff simply appliquéd a "reasonable time" limitation onto the FCC's order and then decided for itself what that time limit should be. Id. at 202. Ameritech Illinois does not agree that it is proper for this Commission to blue-pencil time limits into the FCC's order, or that one year should be the limit. The order provides a three-year schedule for the caps; further, the election generally does not begin until interconnection agreements expire, so in many cases Staff's proposal would make the election expire before it could even be exercised. ISP Compensation Order, ¶¶ 7-8, 82. In addition, Staff's position at most raises a "novel interpretative issue" that the FCC refuses to consider in section 271 proceedings. Arkansas & Missouri 271 Order, ¶ 82.

The Staff argument that the election creates "uncertainty" fares no better. Staff Br. at 200. To the extent any CLEC could claim a vested right to the certainty of a regime that supports arbitrage and that the FCC is in the process of dismantling, the FCC has already decided how that interest is to be addressed. The transitional rate caps, like the permanent rules now under development in the FCC, do not apply to existing agreements unless those agreements so provide (*e.g.*, by a change-of-law provision). ISP Compensation Order, ¶ 82.

N. Checklist Item 14: Resale.

With one minor exception, discussed below, there is no dispute that Ameritech Illinois satisfies the requirements of checklist item 14. Neither Staff nor any CLEC raises any issue with respect to this checklist item in its brief, and Staff affirmatively states that "Ameritech Illinois has shown that it satisfies the requirements of Checklist Item 14 with respect to its DSL services" and with respect to its resale rates. Staff Br. at 213-214.

The lone dissenter is the Attorney General, who states that Ameritech Illinois' affiliate AADS must provide DSL transport at a wholesale discount. AG Br. at 21-24. The Attorney General fundamentally misapprehends the issue. DSL transport is sold to Internet Service Providers ("ISPs") and, as a matter of law, these are not "retail" sales that trigger the duty to resell the service at a wholesale discount. Arkansas & Missouri 271 Order, ¶ 80; Staff Br. at 235 (noting that "AADS does not offer DSL services to end-users directly"); Am. Ill. Br. at 183-184. Accordingly, there is no obligation under section 251(c)(4) of the Act for AADS to offer DSL transport service for resale at a wholesale discount.

The ASCENT decision (Association of Communications Enterprises v. FCC, 235 F.3d 662 (D.C. Cir. 2001)) cited by the Attorney General does not factor into this analysis. The question considered by ASCENT was whether advanced services affiliates are exempt from certain obligations that apply to incumbent LECs. By contrast, the point here is not who *provides* DSL transport (Ameritech Illinois or AADS) but who *obtains* it (ISPs, rather than the public). Even assuming (for sake of argument only) the Attorney General's premise that AADS *does* have the same resale obligations as Ameritech Illinois under Section 251(c)(4), AADS fully complies. Am. Ill. Br. at 182-183. But its DSL transport service is a wholesale offering, not a retail offering, and is not required to be offered at a wholesale discount. Arkansas & Missouri 271 Order, ¶ 80; Am. Ill. Br. at 183.

III. AMERITECH ILLINOIS' ENTRY INTO THE INTERLATA SERVICES MARKET IN ILLINOIS WILL PROMOTE COMPETITION AND FURTHER THE PUBLIC INTEREST

In its opening brief, Ameritech Illinois described the statutory and FCC standards for the public interest test of section 271(d)(3)(C), and demonstrated that public interest proposals of Staff and the intervenors lacked merit. We reply further on those specific proposals below, but it is important to first reiterate the basic "public interest" principles that the intervenors overlook.

First, the public interest test is not a funnel through which one pours all the requirements of state law into a federal checklist proceeding. Staff, Cook County, the Attorney General and many of the CLECs take the position that compliance with state law is a public interest consideration that the FCC would consider in a section 271 proceeding. Staff Br. at 215; WorldCom Br. at 40-44; AG Br. at 25-33; Cook County Br. at 6-8; Z-Tel Br. at 19-21; McLeodUSA Br. at 13-14; RCN Br. at 31-36; AT&T Br. at 145-53. As explained in Ameritech Illinois' opening brief, and reiterated in the Introduction to this reply brief, the FCC does not include disputes over compliance with state law under the federal public interest standard. Am. Ill. Br. at 185-87. Moreover, the FCC has never withheld relief under section 271 based on any requirement of state law. See Tr. 1733 (Hoagg). Still less does the public interest test constitute an invitation to this Commission: Congress did not authorize state commissions to consult with or advise the FCC on the public interest as part of a Section 271 application *at all*. Rather, section 271 directs the FCC to consult with state commissions regarding compliance with Tracks A and B, and with the 14 checklist items. 47 U.S.C. § 271(d)(2)(B).

Second, the public interest test is not a second home for arguments that were rejected under Track A or the competitive checklist. It would make no sense for the FCC to say that some proposal (*e.g.*, a market share test for section 271 approval) is a bad idea under Track A or the checklist, then turn around and deem that same proposal to be compelled by the "public interest and necessity." Thus, the FCC has repeatedly rebuffed parties that sought to revivify arguments by simply shifting them from Track A or the checklist to the public interest test. Compare Michigan 271 Order, ¶ 77 ("We also do not read [Track A] to require that a new entrant serve a specific market share") with New York 271 Order, ¶ 427 ("Congress specifically declined to adopt a market share or other similar test for BOC entry into long distance, and we have no intention of establishing one here [under the public interest test].")

Third, the public interest test is not a suggestion box for CLECs to submit any and all ideas they have for imposing new obligations on the incumbent LEC. Such an unlimited inquiry would nullify the express limitations on section 271 established by Congress and the FCC. Section 271(d)(4) – which immediately follows the statutory "public interest" test – commands that "[t]he Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist set forth in subsection (c)(2)(B)." 47 U.S.C. § 271(d)(4). To illustrate: AT&T (among others) raises an issue concerning Ameritech Illinois' compliance with section 13-801 of the Illinois PUA. AT&T Br. at 151. AT&T is asking this Commission to advise the FCC to "extend the terms used in the competitive checklist" by rewriting checklist item 2 (under cover of a "public interest" analysis) to require Ameritech Illinois to provide "[n]ondiscriminatory access to network elements" both in accordance with the federal unbundling rules *and* in accordance with the state law that has scrapped those rules in the platform context. June 11, 2002 Order, Docket No. 01-0614, at 30. See also Staff Br. at 104 (arguing that Ameritech Illinois had not complied with checklist item 2 because it had not fully complied with section 13-801). Yet to do so would clearly violate the statutory command of section 271(d)(4).

Further, the FCC has recognized that section 271 proceedings are not the place to resolve "new and unresolved interpretive disputes about the precise content of an incumbent LEC's obligations to its competitors, disputes that our rules have not yet addressed and that do not involve per se violations of self-executing requirements of the Act." Texas 271 Order, ¶ 23. As the FCC reasoned, such an approach would be "irreconcilable with th[e] statutory scheme" because "the section 271 process simply could not function as Congress intended if we were generally required to resolve all such disputes as a precondition to granting a section 271 application." Id. ¶ 24. One reason that such inquiries are improper is the FCC's tight time limit for reviewing applications (id. ¶ 25), but that is not the only one. As the FCC explained (id. ¶ 26):

> Congress designed section 271 to give the BOCs an important incentive to open their local markets to competition, and that incentive presupposes a realistic hope of attaining section 271 authorization. That hope would largely vanish if a BOC's opponents could effectively doom any section 271 application by freighting their comments with novel interpretive disputes and demand that authorization be denied unless each one of those disputes is resolved in the BOC's favor. Indeed, if that were the required approach, the BOCs would face enormous uncertainty about the steps they need to take to win section 271 authorization, and they would therefore lose much of their incentive to cooperate in opening their local markets to competition in the first place. That result would disserve the public interest in greater competition in both local and long-distance markets, and it would defeat the congressional intent underlying this statutory scheme.

Finally, it is not enough for a party to suggest some action and say *that action* is in the public interest, simply because it is in that party's interest (along the lines of "what's good for General Motors is good for the U.S.A.") or based on the conclusory assertion that the market is not irreversibly open. The issue is whether *granting the BOC's application* would be in the public interest, not whether adopting some CLEC proposal would also serve the public interest. 47 U.S.C. § 271(d)(3)(C). On that issue, the FCC considers whether "relevant factors exist that would frustrate the congressional intent that markets be open," and whether that approval would not serve the public interest Congress expected it to serve (New Jersey 271 Order, App. C, ¶ 71). The FCC has held that "[c]ompliance with the competitive checklist is itself a strong indicator that long distance entry is consistent with the public interest" (id. ¶ 70) and the strength of that presumption in favor of the BOC is shown by the fact that the FCC has not once denied interLATA relief to a BOC that satisfied the checklist.

A. Regulatory Compliance

Staff and certain CLECs contend that Ameritech Illinois has demonstrated a pattern of regulatory non-compliance. See, e.g., Staff Br. at 217; AT&T Br. at 147. As Ameritech Illinois has explained previously, Ameritech Illinois disagrees with these parties' views, both with respect to the Company's overall compliance with Commission orders and their characterization of individual proceedings. Am. Ill. Ex. 15.0 (Johnson Rebuttal) at 15. Ameritech Illinois takes seriously its obligations to comply with applicable state and federal requirements. Id. Moreover, most of the "noncompliance" examples which were presented by the parties in testimony reflected disputes over legal, factual and policy issues – not non-compliance. Id. Staff's and the CLECs' opening briefs similarly distort Ameritech Illinois' compliance record.

1. Shared Transport

Staff focuses on shared transport as the core example of this "non-compliance." Staff Br. at 217-27.[46] Ameritech Illinois agrees that this issue was very contentious and that it extended over the course of several years in multiple proceedings. However, Ameritech Illinois does not agree that it ever violated a Commission order. More importantly, Ameritech Illinois filed a permanent shared transport tariff in 2000 (which has now been fully evaluated by the

46 AT&T and Worldcom also refer to shared transport in their briefs. AT&T Br. at 149-50; Worldcom Br. at 42.

Commission in Docket No. 00-0700) and this issue is now ancient history. Am. Ill. Ex. 15.0 (Johnson Rebuttal) at 19-20. Ameritech Illinois sees no value in continued debate over what past shared transport orders did, or did not, require. Moreover, as the following discussion demonstrates, Staff has grossly oversimplified a very complex regulatory history.

The Wholesale Order. Staff contends that the Commission "invented" the UNE-P (of which shared transport is an element) in the 1996 Wholesale Order. Staff Br. at 218. Staff is flatly incorrect. The UNE-P as we know it today is an integrated combination of loops and unbundled switching/shared transport ("ULS/ST") which is purchased on a per-line or per-minute-of-use basis, as applicable. Although dubbed "the platform" in the Wholesale Order, the 1996 version of this offering looked nothing like today's UNE-P. *First*, the Commission's 1996 Order was solely an *unbundling* order. At the time the Wholesale docket was initiated, the 1996 Act had not been enacted and Ameritech Illinois was under no obligation to provide unbundled local switching. In the Wholesale Order, the Commission simply unbundled the switch and made clear that the CLECs would have to combine the unbundled switch with loops and transport facilities themselves. June 26, 1996 Order, Docket Nos. 95-0458/0531 at 64-65. The Commission later confirmed that this was just an unbundling order:

> [W]ith respect to whether the LDDS petition decision in the Ameritech Wholesale docket required the LEC to provide combinations, a close reading of the Commission conclusion (See pp. 63-66 of 95-0458/0531) indicates ***that this was a decision that required unbundling by the LEC and allowed rebundling by the competing carrier. It did not require provision of LEC combinations*** priced upon the costs of the underlying network elements. ***Therefore, not ordering GTE to provide such combinations is not inconsistent with our LDDS platform decision in the Ameritech Wholesale Docket. For these reasons we do not order GTE to provide combinations of network elements at unbundled network element prices pursuant to state law***.

May 19, 1998 Order, Docket 96-0503, 1998 Ill. PUC LEXIS 390 at 19 (emphasis in original).

Second, the Commission adopted *Staff's* "platform" proposal, which would have required CLECs to purchase substantial blocks of switch capacity under volume and term commitments, and thus shoulder significant financial and operational risks in the marketplace. June 26, 1996 Order, Docket Nos. 95-0458/0531, at 77; Docket Nos. 95-0458/0531, Staff Ex. 1.04 at 11-13 & Tr. 407 (administrative notice requested). This is a far cry from the per-line and per-minute rate structure ultimately adopted by the FCC. *Finally*, nowhere in the Wholesale Order did the Commission address the transport component of the UNE-P in any meaningful way. The only unbundled transport available at the time was dedicated transport, because only dedicated transport can be unbundled from the switch. The concept of "shared" transport was coined later by the FCC.

The FCC's First Report and Order. Contrary to Staff's assertion, the FCC's 1996 First Report and Order did not impose requirements on ILECs that were "virtually identical" to this Commission's. Staff Br. at 218. First, the FCC's requirement that ILECs provide CLECs with the UNE-P as a "combination" was fundamentally different from what this Commission required in the Wholesale Order, which assumed that the *CLECs* would combine the UNEs. This federal combinations obligation has been in litigation for years and was not finally resolved until the U.S. Supreme Court's decision earlier this year in Verizon Comms. Inc. v. FCC, 122 S. Ct. 1646 (2002). Second, the FCC required the provision of switching functionality on a per-line basis, not on a block of capacity basis. First Report and Order, ¶ 412. With respect to transport, the FCC required that both "dedicated" and "shared" transport be offered on an *unbundled* basis. First Report and Order, ¶¶ 440-43. This was not shared transport as we know it today, which is *not* a stand-alone unbundled network element. The FCC has repeatedly agreed with Ameritech

Illinois that shared transport cannot be provided separately from unbundled local switching. Third Order on Reconsideration, ¶¶ 42, 47; UNE Remand Order, ¶ 372.

The TELRIC Order. Staff contends that Ameritech Illinois did not file a "shared" transport tariff that comported with the Commission's directive in the Wholesale Order and the then-applicable FCC regulations. Staff Br. at 220. With the benefit of hindsight, Staff attributes more clarity to the orders of this Commission and the FCC than existed at the time. Ameritech Illinois' tariff offered both dedicated and "shared" transport offerings; under the latter arrangement, CLECs could share dedicated transport facilities between themselves. These were the only kinds of transport that could be *unbundled*. Although the Commission ultimately concluded (also in hindsight) that Ameritech Illinois had misunderstood the FCC's First Report and Order, Ameritech Illinois was acting in good faith. It was not until the FCC issued a new definition of shared transport in August of 1997 that the UNE-P as we know it today came into being. Third Order on Reconsideration, ¶¶ 41-42. At that point, Ameritech Illinois duly complied with the FCC's order and, as recognized in the TELRIC Compliance Order, filed a shared transport tariff. Oct. 16, 2001 Order, Docket No. 98-0396, at 53.

The Merger Order. The Commission's Order in the SBC/Ameritech merger proceeding accepted a voluntary commitment by SBC and Ameritech to file both interim and permanent shared transport tariffs modeled on the product that was being offered in Texas. Sept. 23, 1999 Order, Docket 98-0555, at 250-53 (Condition 28). Staff suggests that Ameritech Illinois' compliance tariff for interim shared transport was flatly contrary to the Merger Order. Staff Br. at 223-24. Staff – of all parties – should be more careful with its rhetoric. The Merger Order had unique pre-approval conditions relative to the interim shared transport offering. Prior to merger close, Staff was required to review Ameritech Illinois' proposed tariff and make a recommendation to the Commission as to whether it should approve the tariff as compliant with the Merger Order:

> The filing of a tariff with this Commission containing such SBC/Texas interim version and our approval of such tariff (which must occur before the Joint Applicants may close on the merger) shall constitute compliance with this condition. Prior to our approval, such tariff shall be reviewed by Commission Staff with a Staff recommendation to the Commission for approval or disapproval.

Sept. 23, 1999 Order, Docket No. 98-0555, at 183.

This was not just the standard Section 9-201 "pass-to-file" scenario. The Commission had to *approve* the tariff. Therefore, by necessity, Ameritech Illinois worked very closely with Staff in developing this tariff. And, in fact, Staff made an affirmative recommendation to the Commission that the tariff complied with the Order (or the merger would never have closed). Given the positions which Staff took in the TELRIC compliance proceeding, Staff obviously changed its views later. However, it ill behooves Staff to self-righteously accuse Ameritech Illinois of being "woefully deficient" in its "undoubted obligation to provide ULS-ST at just and reasonable rates" when it mid-wifed the birth of the tariff and clearly did *not* think that it was "deficient" at that time. Staff Br. at 224.[47]

In short, Ameritech Illinois does not deny that the history of shared transport has been confusing and contentious. However, the *facts* do not support Staff's blanket and simplistic indictment of Ameritech Illinois' conduct over the last six years.

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[47] The remaining disputes were primarily over pricing proposals. Staff Br. at 224-27. These issues were duly resolved in the dockets in which they arose and Ameritech Illinois has complied with these Commission orders.

2. Other Allegations of Non-Compliance

The remainder of Staff's allegations of non-compliance consist of CLEC complaints which the Commission resolved against Ameritech Illinois. Staff's position appears to be that, if the Commission rules against Ameritech Illinois on a disputed issue, Ameritech Illinois is *per se* a scofflaw. At best, Staff is naïve. At worst, Staff is deliberately distorting the record. The transition to competition has not been and will not be without disputes. Ameritech Illinois is obligated to provide a myriad of products and services under a complex, overlapping (and occasionally conflicting) set of legal requirements. In many instances, Ameritech Illinois' obligations are undefined beyond generic prohibitions against discriminatory conduct. As the U.S. Supreme Court has said: "It would be gross understatement to say that the Telecommunications Act of 1996 is not a model of clarity. It is in many important respects a model of ambiguity or indeed even self-contradiction." AT&T Corp. v. Iowa Utilities Bd., 525 U.S. 366, 397 (1999). It is a fact of regulatory life that CLECs take an aggressive view of what they are (or should be) entitled to. It is equally a fact of regulatory life that the incumbent carrier will see these issues from a more conservative perspective. The mere fact that the Commission ultimately sides with the CLECs (or Staff) on any given issue does *not* mean that Ameritech Illinois acted in bad faith or that its actions indicate a pattern of "non-compliance." These orders are simply part of a complex patchwork of federal and state decisions that, over time, more precisely define Ameritech Illinois' obligations to its competitors.[48]

[48] In support of its regulatory non-compliance arguments, Staff cites statements made by various legislators when the General Assembly enacted PA 92-22. Staff Br. at 230-31. Since these statements say nothing about non-compliance and instead simply reflect pro-competitive legislative policy, Ameritech Illinois is at a loss to see how they support Staff's argument.

Staff refers to the Z-Tel complaint, in which Z-Tel contended that it was not receiving line loss notifications on a timely basis. Staff Br. at 228. This was a systems problem that affected *one* OSS functionality out of hundreds. No one has ever contended that Ameritech Illinois was acting in bad faith or deliberately allowed its performance to deteriorate. Ameritech Illinois stated from the outset of the Z-Tel litigation – and again in this proceeding – that it understood its obligation to provide these notifications on a timely basis and that it was working diligently to resolve the problem. May 8, 2002 Order, Docket No. 01-0160 at 10-14; Am. Ill. Ex. 15.0 (Johnson Rebuttal) at 13; Am. Ill. Ex. 4.1 (Cottrell Rebuttal) at 2-12. This is not contested in the record. Nor is there any real dispute that Ameritech Illinois has made great strides on the issue, and has kept CLECs and Staff informed of its progress. Based on the section 271 applications the FCC has approved to date, if such systems issues constitute regulatory malfeasance, as Staff suggests, very few companies would survive the section 271 gauntlet. See New Jersey 271 Order, ¶¶ 108-109 (granting 271 approval despite the ongoing correction of a order completion notifier accuracy issue); Pennsylvania 271 Order, ¶ 29 (granting 271 approval despite ongoing fixes to Verizon's resale billing problem).[49]

The Commission's decision in the MCI PIC change verification complaint (see Staff Br. at 229) has nothing to do with section 271 compliance. See Dec. 17, 1997 Order, Docket No.

[49] As Staff itself argued in Docket No. 02-0160, anticompetitive intent is not necessary to finding a violation of Section 13-514 of the Act. There, Ameritech Illinois argued that it had not violated Section 13-514 because no one had presented any evidence, or even argued, that Ameritech Illinois acted out of anticompetitive intent. Staff disagreed that evidence of improper intent was necessary. According to Staff, "Section 13-514 of the Act contains no such requirement." May 2, 2000 Resp. of Staff to Ameritech's and Z-Tel's Petitions for Review of ALJ's Decision, Docket No. 02-0160, at 2. The Commission agreed with Staff's position, finding, "We do not agree that a showing of intent to impede competition is required, as Ameritech suggests." May 8, 2002 Order, Docket No. 02-0160, at 15.

97-0540. This complaint case is almost *five years old* and involved PIC changes for local toll service provided by IXCs – not local service provided by CLECs subject to the 1996 Act. In the QST docket (see Staff Br. at 229), Ameritech Illinois argued that section 252(i) should not apply to interconnection agreement terms governing reciprocal compensation, in part because it would constitute bad policy to allow CLECs to opt into agreements made with other carriers that allowed those carriers to receive a windfall for ISP-related traffic. Nov. 5, 1998 Order, Docket No. 98-0603, 1998 Ill. PUC Lexis 986 at *18-*19. While the Commission disagreed with Ameritech Illinois, Ameritech Illinois' position in that docket can hardly constitute regulatory malfeasance, given that the FCC later adopted Ameritech Illinois' position in the ISP Compensation Order (at ¶¶ 2, 82). Further, the special construction charge docket (see Staff Br. at 229) established new policies (such as CLEC notification processes and pricing) for the situation where Ameritech Illinois does not have facilities available. See Aug. 15, 2000 Order, Docket 99-0593. Following all of these decisions, Ameritech Illinois duly amended its practices and Staff does not contend otherwise.[50]

AT&T and Z-Tel refer to Docket No. 01-0614 where the Commission ultimately resolved certain issues against the Company. AT&T Br. at 151; Z-Tel Br. at 19-20. These issues constituted good faith disputes over the proper interpretation of a new statutory provision (Section 13-801). The mere fact that Ameritech Illinois did not prevail in its views does not

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[50] Staff improperly contends that the Commission found Ameritech Illinois to have violated Section 13-514 "on at least one other occasion," citing the PrimeCo proceeding. The Commission *vacated* that decision. Oct. 2, 2001 Order, Docket No. 00-0670. The term "vacate" means "to annul; to cancel or rescind; to declare, to make or to render, void; to defeat; to deprive of force; to make of no authority or validity; to set aside." MCI Telecommunications Corp. v. GTE Northwest, 41 F. Supp. 2d 1157, 1163 (D. Or. 1999) (quoting Action on Public Smoking & Health v. Civil Aeronautics Board, 713 F.2d 745, 797 (D.C. Cir. 1983)). Thus, the PrimeCo decision cannot be cited, and Staff should have known better than to cite it.

mean that the Company was guilty of "non-compliance" before the Commission even ruled. Am. Ill. Ex. 15.0 (Johnson Rebuttal) at 16-17.

Ameritech Illinois is not the only company which has been on the receiving end of negative Commission decisions. For example, the Commission recently entered an emergency order against WorldCom under Section 13-514, ordering that carrier to cease and desist slamming and misleading marketing practices. July 8, 2002 Order Granting Emergency Relief, Docket No. 02-0443. Similarly, the Commission entered an order finding that AT&T violated Section 13-514 by denying both Ameritech Illinois and other carriers access to certain AT&T facilities. Feb. 27, 1998 Order, Docket No. 97-0624. Interestingly, Staff does not seem to view these carriers as regulatory scofflaws.

Given the large number of CLECs of varying capabilities and sophistication to whom Ameritech Illinois provides products and services, the extensive array of products and services which it provides, and the complex interfaces between Ameritech Illinois and the CLECs, the potential for misunderstanding and disputes is enormous. The fact that there have been relatively *few* complaints is what Staff should focus on.

Staff wraps up its regulatory compliance discussion with the astonishing statement that "Ameritech's past level of regulatory compliance is close to non-existent with respect to competitive matters." Staff Br. at 234. Staff did not come *close* to making such a case – and, indeed, could not have. The remarkable level of competition in Illinois today is testament to the fact that Ameritech Illinois *is* providing CLECs the products and services that they need to compete and that it *is* complying with its legal obligations. Ameritech Illinois' processes are not perfect and its judgments are not infallible, but no telephone company in the country would meet those standards. Ameritech Illinois readily concedes that it has disagreed (sometimes strongly) with Commission decisions on specific issues and that it has used its best efforts (sometimes successfully, sometimes not) to convince the Commission to take a different approach in that or subsequent proceedings. However, these positions have always been taken in good faith and in accordance with the rule of law. Unfortunately, over the last few years Staff has dragged an ever-expanding diatribe on Ameritech Illinois' "non-compliance" from docket to docket, to the point where it has taken on a life of its own. It does not reflect reality, it is not a basis on which public policy decisions should be made, and it is certainly not relevant to checklist compliance.

B. Staff's Proposed Tariffing Requirement.

Ameritech Illinois demonstrated in its opening brief (at 187-190) that the only issues on "tariffing" of wholesale products and services presented here are relatively minor disagreements on policy:

- Staff contends that all wholesale offerings must be tariffed. Virtually all of them are, and Ameritech Illinois has committed to include the remainder in its next broad-based UNE filing, so the only difference is one of timing on a handful of offerings.
- Ameritech Illinois contends that the 1996 Act gives carriers the ability to negotiate "off tariff" and Staff agrees; the only difference is again a question of timing, in that Staff thinks that tariffs should be in place before negotiation. Staff's own witness acknowledged Ameritech Illinois' "position to be very similar to mine in this respect." Tr. 1738 (Hoagg).

In light of the discussion of these narrow policy questions that already appears in Ameritech Illinois' opening brief, and the fact that no federal requirement is at issue, Ameritech Illinois would not have addressed this issue here on reply – but for Staff's unfortunate and unwarranted accusation that "Ameritech is – by its own admission – currently violating Section 13-501(a), and appears to have only the most desultory plans to rectify this." Staff Br. at 234.

Staff is not only misstating Ameritech Illinois' position, but also glossing over the complexities of its *own* position on tariffing. At the hearing, Staff's own witness had to acknowledge (despite his initial rigid remonstration that "the law is the law") that "there is nothing in the PUA" to support Staff's allowance for off-tariff negotiations in the wholesale context. Tr. 1743 (Hoagg). Thus, Staff's position on the timing of such negotiations (that parties should tariff first before complying with the 1996 Act) ultimately represents a policy preference, not a rule of law. Am. Ill. Br. at 188-190.

When its own proposal does not even comply with "the law" that Staff thinks applicable, Staff should be more careful before it casts stones at others. After all, a minor disagreement on policy preferences does not a violation of law make, nor could one say that Ameritech Illinois is violating the PUA when "there is nothing in the PUA" to support Staff's preference. But Staff makes no attempt to address the testimony at hearing – or even to acknowledge that it took place.

Lest Staff's accusation leave any confusion on this point, Ameritech Illinois will reiterate just what "the law" is, and that there has been no violation, admitted or otherwise:

(1) Section 271, the foundation of this proceeding, does not require tariffs or even make any reference to them; instead, it contemplates that carriers are to demonstrate compliance by means of interconnection agreements. Am. Ill. Br. at 187-188.

(2) The FCC, to which this Commission will address its recommendations here, has not ordered tariffing of all or any offerings; instead, it has held that tariffing is not required for purposes of section 271. Id. at 188.

(3) The remainder of the 1996 Act does not breathe the word "tariff"; instead, it calls for interconnection agreements, and it goes to a great deal of trouble to specify how such agreements are to be established. Id. at 187-189.

(4) No court applying the 1996 Act has ever held that the Act requires tariffing. To the contrary, courts have held that an "all-tariff, all-the-time" regime conflicts with the Act's

preference for interconnection agreements. In fact, a case that *Staff* cites to support its position actually holds: "Before purchasing finished services or unbundled elements from an ILEC, each CLEC must enter into an interconnection agreement." MCI Telecommunications Corp. v. GTE Northwest, Inc., 41 F. Supp. 2d 1157, 1177 (D. Or. 1999). Thus, a state commission conflicts with the Act if it "dispense[s] with the interconnection agreement altogether and is allowing CLECs to order services 'off the rack' [by tariff] without an interconnection agreement." Id.[51]

(5) While section 13-512 of the Illinois PUA requires tariffing of "telecommunications services," it is not clear whether that applies to unbundled network elements (Staff simply assumes it does); more importantly, even Staff's witness acknowledged that section 13-512 contains an implied exception that allows carriers to negotiate interconnection agreements "off tariff" pursuant to the 1996 Act.

C. Staff's Attempt To Convert State Law Requirements Into Federal Requirements.

1. Collocation: The All Equipment List ("AEL")

Staff continues to argue that Ameritech Illinois is not in compliance with the Commission's order in Docket 99-0615. Staff Br. at 76-80. As explained in Ameritech Illinois' opening brief, it is Staff – not Ameritech Illinois – who is misreading the Order. Am. Ill. Br. at 195-96. Furthermore, this debate is not a function of Ameritech Illinois "misunderstanding" Staff's position, nor is it a question of the "format" of the AEL. Staff Br. at 77. Since there are

51 Staff also cites a federal decision that upheld a reference to tariffs *in an interconnection agreement* (US West v. Sprint, 275 F.3d 1241 (10th Cir. 2002), and a decision that upheld the substantive terms of a tariff on "common transport" (Michigan Bell Tel. Co. v. Strand, 26 F. Supp. 2d 993 (W.D. Mich. 1998). Neither case, however, addressed Staff's "tariff first, negotiate later" policy; neither case held that tariffs are *required* by federal law; and even Staff contends (at 233) that tariffs are permissible only if they do not displace interconnection agreements.

restrictions on the CLECs' right to collocate equipment in Ameritech Illinois' central offices other than safety standards, Staff's reading of the Commission's order would require the Company to review thousands of pieces of network equipment to determine whether they meet *all* collocation standards. Am. Ill. Ex. 1.2 (Alexander Surrebuttal) at 28-29. This is an extremely burdensome obligation which was not imposed on the Company by either the FCC or the plain terms of this Commission's order in Docket 99-0615.

Staff also suggests that Ameritech Illinois took the position that "it is not necessary to update the AEL." Staff Br. at 78. Staff has misread Mr. Alexander's testimony, which takes no such position. The Company recognizes its obligations in this regard and will update the AEL quarterly in the future. Am. Ill. Ex. 1.1 (Alexander Rebuttal) at 78.

2. <u>Collocation: Power Cabling</u>

Staff continues to argue that Ameritech Illinois is not complying with its obligations to provide power cabling in collocation arrangements. Staff Br. at 83-89. Staff has misunderstood the Company's position. Ameritech Illinois *will* provide the power cabling as required by its tariff to all CLECs subscribing to collocation under tariff. Am. Ill. Br. at 197. Therefore, contrary to Staff's suggestion, no "notice of tariff change" is required. The power cabling policy to which Staff objects only arises in the context of negotiated interconnection agreements. Even there, Ameritech Illinois recognizes that CLECs can opt into the McLeodUSA collocation arrangement ordered by the Commission in Docket 01-0623 under Section 252(i) of the 1996 Act. Staff Br. at 87. In short, CLECs can avail themselves of this option if they so desire either under tariff or under the terms of the McLeodUSA agreement. Thus, Staff has lost touch with reality when it claims that the mere fact that the Company offers CLECs a different power cabling arrangement in the GIA would "severely and adversely impact the systemic development of a competitive marketplace in terms of cost and delay." Staff Br. at 86.

3. Installation of Network Interface Devices

Staff contends that Ameritech Illinois is not in compliance with the NID deployment requirements established in Docket Nos. 86-0278 and 94-0431. That matter is best left to a separate proceeding. As Mr. Muhs testified on cross-examination, Ameritech Illinois has deployed NIDs at 99 percent of customer locations. Tr. 765 (Muhs). Further, Ameritech Illinois is not aware of which locations may lack a NID, and absent a house-to-house search of the state Ameritech Illinois has no way of determining where the few remaining locations without a NID would be. Tr. 765 (Muhs). Ameritech Illinois technicians continue to install NIDs at any customer premises where they do not find a NID. Am. Ill. Ex. 16.0 (Muhs Rebuttal) at 7. If a NID is not in place at a customer location, Ameritech Illinois will not charge a CLEC for the work unless the CLEC has a time and material contract with Ameritech Illinois and a CLEC wants Ameritech Illinois to perform additional maintenance work with the inside wire. Id. at 8. In addition, Ameritech Illinois filed a waiver petition with the Commission on August 27, 2002 (Docket No. 02-0555; administrative notice requested), seeking approval of an accelerated program to complete the installation of the few NIDs that remain.

At the very least, these facts show nearly complete compliance with the deployment requirement, and are sufficient to satisfy the federal public interest standard. A NID is not required for the customer to have working service, nor does it affect a CLEC's ability to serve customers in the vast majority of cases. It can facilitate maintenance in some circumstances, but in the event maintenance is necessary the Ameritech Illinois technician will perform that maintenance and will install a free NID at the same time. Id. at 7-8. If, however, Staff maintains this is insufficient to fully comply with state law, the Commission has ample authority to resolve the matter elsewhere. In fact, the Commission is currently addressing this issue in its review of the Part 730 service quality rules, now pending in Docket No. 00-0596. The Commission will also be reviewing Ameritech Illinois' waiver application in Docket No. 02-0555.

Staff (not the CLECs) has also argued that NIDs must be located externally (*i.e.*, mounted on the exterior of the building) and that internal NIDs must be eliminated. The Commission's Third Interim Order in Docket No. 86-0278, however, expressly "grandfathers" all internal NIDs installed prior to the date of that order. In that proceeding, Staff proposed that existing internal NIDs remaining in place. "For existing installations that already have an internally mounted demarcation, however, no further action would be required." Sept. 30, 1987 Third Interim Order, Docket No. 86-0278, at 2. The Commission adopted Staff's proposal, and its findings on the subject are expressly limited to the installation of external NIDS "on all new service installations" and "all old installations that do not have any type of demarcation plug and jack now." Id. at 5, ¶ 6. Staff's brief has simply ignored that ruling.

D. Proposals to Freeze or "Cap" Rates for Wholesale Products.

The word "certainty" (and its opposite number, "uncertainty") appear throughout the intervenors' briefs. They are euphemisms for the intervenors' attempt to have this Commission rule on the merits of future wholesale price proposals before they are even presented.

As discussed in Section II.B.3 supra, the intervenors contend that Ameritech Illinois' wholesale prices do not comply with the checklist because of the "uncertainty" that Ameritech Illinois might propose new rates, or that the few rates that are now interim or uninvestigated may be revised. Ameritech Illinois has shown that the FCC evaluates checklist compliance based on existing rates, and has consistently rejected CLEC arguments about possible future rates.

The mantra of "price certainty" is also used to support the intervenors' requests that the Commission affirmatively impose caps on future rates – effectively pre-judging future rate proposals. See Staff Br. at 238; WorldCom Br. at 16-17. In discussing the certainty they crave, however, the intervenors fail to mention the certainties they already have:

1. If Ameritech Illinois does propose new wholesale rates, those rates will not go into effect unless this Commission, after investigation and notice to interested parties, determines that those rates (and the supporting cost studies) comply with federal pricing rules. As the FCC has held, it must be presumed that if Ameritech Illinois does file new cost studies, this Commission will correctly apply the FCC's rules. Texas 271 Order, ¶ 237. And Staff Witness Koch agreed at the hearing that "rates for wholesale services will not exist . . . without the underlying cost model being examined, unless the Commission permits that to happen." Tr. 1776 (Koch).

2. The 1996 Act does not say that prices must be "certain" or fixed for any particular period of time. It *does* say that prices are to be "based on cost." 47 U.S.C. § 252(d)(1). A cap on rates necessarily means that prices are to be held at a certain level *even if* Ameritech Illinois proves (and even if the Commission, absent a cap, would agree) that the existing rates are *not* based on cost, and are, therefore, no longer lawful.

3. Likewise, the FCC has never held that prices must be certain or fixed. To the contrary, it has acknowledged that "rates may well evolve over time to reflect new information on cost inputs and changes in technology or market conditions" and it has accordingly decided that "[n]o carrier is immune from the effect of future resolutions of disputed issues." Massachusetts 271 Order, ¶ 36.

4. The only "uncertainty" that carriers face is that they may someday be legally obligated to pay prices that are *right* (*i.e.*, prices that *comply* with the 1996 Act and the FCC's

rules), albeit different from those in effect now. There is no legal basis for avoiding that result, nor is there any public interest in doing so.

None of these indisputable facts appears in the intervenors' briefs. Instead, they proceed from the premise that Ameritech Illinois is about to *unilaterally* impose new rates on hapless CLECs, and that something needs to be done now to prevent such an event. See AT&T Br. at 39-46; WorldCom Br. at 8-17. That is absurd. The existing rates cannot be revised until the Commission (or a court) gives the go-ahead. If Ameritech Illinois proposes new rates, and if those rates are too high (as the CLECs presume before even seeing them), then the Commission will reject them on the merits. Conversely, if the Commission agrees that the new rates are correct, it should accept them. In the former situation, a cap would be unnecessary; in the latter, a cap would be unlawful. Either way, the intervenors' cap proposals are improper.

E. Proposals To Suspend The Rules Of Due Process And Ameritech Illinois' Right To Seek Rehearing And Judicial Review.

Inappropriate as it is for the Commission to pre-judge the merits of future proceedings before they are even initiated, Staff and WorldCom take the cake with their suggestion that this Commission should require Ameritech Illinois to drop petitions for rehearing or judicial challenges to Commission decisions in certain rate proceedings. Staff Br. at 242-44; WorldCom Br. at 17. In the first place, Staff's proposal regarding rehearings is now moot, as the Commission has already rendered final decisions on rehearing requests in the four dockets identified by Staff (Nos. 98-0396, 00-0393, 00-0700, and 01-0614). Staff's proposal regarding judicial review was simply tacked on in Staff's brief (at 243) without evidentiary support or further argument.

In addition, although Staff claims to be "fully cognizant of the notion that this is a controversial recommendation" (id. at 243), it cites no legal authority or precedent for its novel request. There is none. Staff's witness even acknowledged that "it is my understanding that the Commission cannot order Ameritech Illinois to relinquish its due process rights" (Staff Ex. 6.0 (Koch Direct) at 44-45), and ultimately Staff acknowledges its position to be nothing more than an attack on due process. See Staff. Br. at 244 ("There is no compelling reason why any party to this proceeding should demonstrate any particular solicitude for Ameritech's rights."). Nor is there any contention that Ameritech Illinois' challenges are frivolous. Indeed, Staff's concern appears to be that Ameritech Illinois might prevail, and that reduces "continuity" in the Commission's pricing decisions. Staff Br. at 243.

There is simply no legitimate basis for requiring an applicant such as Ameritech Illinois to check its legal and constitutional rights at the door to pursue section 271 relief. Clearly, such a requirement would not be in the public interest. Indeed, Staff's own witness acknowledged, on questioning by the ALJ, that he had not taken into account the public policy implications of Staff's proposal. Tr. 1798-99 (Koch). Staff's brief provides no supporting analysis either. Its rationale is as follows (Staff Br. at 244):

> The recommendation is very simple, and needs little explication. Ameritech can agree – or not agree – to cede review of the above-named dockets. The Commission can endorse – or decline to endorse – Ameritech's Section 271 application.

Both halves of Staff's truism are correct. The problem, of course, is that Staff gives no reason for linking one to the other. The Commission can rule on applications for rehearing *on the merits*, and it can endorse, or decline to endorse, Ameritech Illinois' application on *its* merits. The bottom line is that Commission decisions should be made *on* the merits – not bestowed as rewards for favors or withheld as threats at the instance of Staff or WorldCom.

While Ameritech Illinois understands that the Commission intends to strike a proper balance among competing interests on complex issues, it is also true that the Commission is not infallible. The law establishes a procedure for rehearing to give the Commission a chance to correct mistakes. The law gives parties the right to apply for rehearing so they can advise the Commission of a mistake. It is for the Commission to decide whether to grant rehearing in any particular case – in that particular case. Tr. 1790 (Koch). The Commission has taken advantage of the opportunities provided by law, and the arguments presented by parties, and it has granted applications for rehearing in several cases. Suspending the right of rehearing does not benefit the Commission, nor does it benefit the public. Staff's proposal ultimately means that Ameritech Illinois and the Commission would have to rely on the news media, or the good graces of Staff (which has demonstrated its opposition to the rehearing process here) or of Ameritech Illinois' opponents, to take the place of the rehearing application procedure established by law. Tr. 1790-94 (Koch). Staff's own witness was not aware of any contested case in which the Commission granted substantive rehearing (aside from the correction of clerical errors) on its own motion. Id. at 1793.

Suspending the right of judicial review is at least as improper. By terminating the right to seek rehearing, the Commission would be pre-judging the outcome of its own proceedings, and by suspending judicial review the Commission would be attempting to dictate the outcome of proceedings that are now before a court. That reverses the traditional rule of law, under which courts review agency action. Second, there are some issues the Commission does not reach, and in those circumstances judicial review represents the first real opportunity to be heard. For example, the Commission's June 11, 2002 Order in Docket No. 01-0614 (at 18) expressly declined to adjudicate Ameritech Illinois' claims that certain requirements were inconsistent with and pre-empted by federal law. A lack of judicial review in such cases would deny Ameritech Illinois the right to be heard even once.

In short, there is no public interest in the "continuity" or "certainty" of an erroneous or unlawful order or in the curtailment of due process; there is no harm if a lawful order is upheld; and in the end rehearing and judicial review benefit everyone by clarifying the law.

F. Staff's Proposal To Force Ameritech Advanced Data Services To Sell Wholesale DSL Transport To End Users.

1. Staff argues that AADS should be required to sell DSL Transport directly to end users as a retail service. Staff Br. at 236. Staff has narrowed its argument to two points. First, Staff clings to the belief that consumers can buy two services (standalone DSL Transport and Internet access) cheaper separately than in combination. Staff Br. at 236. Staff offers absolutely no evidence to support this assertion and does nothing to rebut Ameritech Illinois' evidence that the reverse is true. Am. Ill. Ex. 13.1 (Habeeb Surrebuttal) at 8-9. Among other reasons, the total cost will be *lower* if the services are purchased in combination because the providers will not have to duplicate overhead costs such as retail sales, marketing and distribution. Id. at 9. In addition, wholesale DSL Transport services are sold more cheaply to ISPs, which enjoy the economies of scale associated with serving a large number of subscribers. Id.

Moreover, consumers are already benefiting from the extremely competitive market for high-speed Internet access services. Am. Ill. Ex. 13.1 (Habeeb Surrebuttal) at 15. There are multiple providers of the service and cable modem providers – not DSL-based service – dominate the field with about two thirds of the market. Am. Ill. Ex. 13.0 (Habeeb Rebuttal) at 7. All providers compete fiercely for the customer's business and offer a variety of promotions ranging from free installation, to free modems, to reduced rates for the first six months of service. Am. Ill. Ex. 13.1 (Habeeb Surrebuttal) at 15. Staff is simply ignoring that "intermodal" competition – the same oversight that the FCC made in the Line Sharing Order, which led the D.C. Circuit to invalidate that order. Am. Ill. Br. at 33.

Staff's second argument can only be characterized as an assertion that "the ends justify the means." Staff argues that if AADS is required to sell DSL Transport on a retail basis, it will then be required to sell DSL Transport to its competitors at a wholesale discount and those discounts would (presumably) be passed along to the end users. Staff Br. at 236. This is not a policy justification. It is, rather, a brazen attack on the Act's distinction between wholesale and retail services. The wholesale discount applies only to wholesale services – if an incumbent can be *forced* to provide wholesale services at retail, there is no need to limit the discount.

One final point: The FCC has held that DSL Transport used to access the Internet is an interstate service subject to federal jurisdiction. Memorandum Opinion and Order, In re GTE Telephone Operating Cos., GTOC Tariff No. 1, GTOC Transmittal No. 1148, 13 F.C.C. Rcd. 22466, ¶ 1 (rel. Oct. 30, 1998) (DSL Transport service "which permits Internet Service Providers (ISPs) to provide their end users with high-speed access to the Internet, is an interstate service and is properly tariffed at the federal level"). Accordingly, there is a serious question whether this Commission has the authority to issue orders impacting AADS' DSL Transport service – much less to order the overhaul proposed by Staff.

2. Staff also alleges that AADS' business decision to provide DSL Transport service only when an end user is served by Ameritech Illinois voice service is contrary to the public interest, and that this "bundling" should "cease." Staff Br. at 236-237. Staff is improperly using the public interest analysis to re-write the FCC's unbundling and line splitting rules. First, Staff is proposing that AADS be *required* to enter into line splitting arrangements with voice CLECs. See id. But the FCC has held that line splitting is a purely *voluntary* arrangement, and that incumbents need not continue providing DSL service to end users that obtain voice service from

a voice CLEC. See Line Sharing Order, ¶ 72; Line Sharing Reconsideration Order, ¶¶ 16, 26; Texas 271 Order ¶ 330. Staff has simply ignored these binding federal rules.

Second, Staff is apparently proposing that Ameritech Illinois be required to unbundle and provide to the voice CLEC the low frequency portion of the loop, and, at the same time, provide the high-frequency portion of that loop ("HFPL") to AADS, while Ameritech Illinois itself provides no service to the end user. However, the FCC has already concluded that the low frequency portion of the loop need not be unbundled (Texas 271 Order, ¶ 330), and that incumbent LECs need provide the HFPL *only* where they provide the end user's voice service (Line Sharing Order, ¶ 72; Line Sharing Reconsideration Order, ¶¶ 17, 26).

G. AT&T's "Structural Separation" Proposal.

In its opening brief, Ameritech Illinois demonstrated that AT&T's structural separation proposal has no legal basis under Illinois or federal law, and that the FCC has expressly refused to consider structural separation under the public interest test. The competitive entry data provided in Section I of this brief and of the opening brief refute AT&T's alleged factual basis: namely, AT&T's assertion that the 1996 Act is "uncomfortably close" to death. And in Section III.A, Ameritech Illinois refuted AT&T's premise that Ameritech Illinois has engaged in a pattern of non-compliance; thus, there is no basis for AT&T's assumption that existing laws do not or will not work. The final rebuttal to AT&T's claim comes from AT&T itself: Contrary to its assumption here that the 1996 Act is not working and that the local market in Illinois is not open, AT&T has entered the local market in force. At the time of AT&T's entry into the residential market, AT&T's own Chairman stated publicly that the 1996 Act is "now finally beginning to work" and urged policymakers "to let the Telecom Act stand and continue to work as it is working now." Am. Ill. Cross Ex. 29.

CONCLUSION

For the reasons set forth above and in its opening brief, Ameritech Illinois respectfully requests that the Commission enter an order recommending a finding that Ameritech Illinois has satisfied the requirements of Track "A" and of the competitive checklist, subject to review of commercial performance data and the OSS test in Phase II of this proceeding.

Respectfully submitted,

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